FINAL REPORT

FIRST STATUTORY FIVE-YEAR REVIEW of Remedies Implemented for

Part I -

PCB and CADMIUM IMPACTED SHALLOW SOILS
Installation Restoration Site 02 (IR02)
Fleet and Industrial Supply Center Oakland
Alameda Facility/Alameda Annex (FISCA)

and

Part II -

MARSH CRUST at Fleet and Industrial Supply Center Oakland
Alameda Facility/Alameda Annex (FISCA), and
MARSH CRUST and FORMER SUBTIDAL AREA at Alameda Point

Alameda, California

April 2006

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Approved By: Date: 4/28/2006

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PREAMBLE

This document contains two separate statutory five-year review reports, reviewing remedies that have been implemented for mitigating environmental concerns associated with environmental media of interests at installations once operated by the Department of the Navy (DON) in Alameda, California.

Part I of this document contains the first statutory five-year review of the remedies implemented for polychlorinated biphenyl (PCB) and cadmium impacted shallow soils at Installation Restoration Site 02 (Site IR02). This site is located at the former Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA).

Part II of this document contains the first statutory five-year review of remedies implemented for marsh crust materials underlying FISCA, and marsh crust and subtidal area materials underlying the former Naval Air Station (NAS) Alameda, now known as Alameda Point.

Part I and Part II are both first five-year review documents, and as such they are combined together in one binder. However, the information repositories at FISCA and Alameda Point are at different locations. Therefore, the Alameda Point information repository copy (Part II) is issued also in a separate binder for placement separately in the Alameda Point information repository.

PART I

FINAL REPORT

FIRST STATUTORY FIVE-YEAR REVIEW of Remedies Implemented for

PCB and CADMIUM IMPACTED SHALLOW SOILS
Installation Restoration Site 02 (IR02)
Fleet and Industrial Supply Center Oakland
Alameda Facility/Alameda Annex (FISCA)

ALAMEDA, CALIFORNIA

EXECUTIVE SUMMARY

This report presents the results of the first statutory five-year review of polychlorinated biphenyl (PCB) and cadmium impacted shallow soil remedial actions that have been implemented at Installation Restoration (IR) Site 02 (IR02), located at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA), Alameda, California. These remedies have been described and published in the Site IR02 Remedial Action Plan/Record of Decision (RAP/ROD) of June 25, 2001. This decision document was approved by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) on June 26, 2001.

This five-year review report was prepared by Brown and Caldwell under subcontract with CDM Federal Programs Corporation for the Navy Multi-Media Contract N68711-00-D-0004, and conducted in accordance with the Department of the Navy (DON) and Marine Corps *Policy for Conducting Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Statutory Five-Year Reviews,* revised May 2004, and the USEPA's *Comprehensive Five-Year Review Guidance* dated June 2001.

The five-year review process for Site IR02 involved reviews of relevant site documents and data, a visual inspection of Site IR02, and interviews with persons involved with many aspects of selection and implementation of the remedies for the PCB and cadmium impacted shallow soils of Site IR02. The purpose of this five-year review was to evaluate whether the remedies that have been implemented for PCB and cadmium impacted shallow soils at Site IR02 remained protective of human health and the environment at that site as intended by the decision documents. The methods used in assessing the implementation and performance of the selected remedies, as well as the findings and conclusions of these evaluations are documented in this five-year review report.

The Site IR02 RAP/ROD identified future planned land uses of Site IR02, about 10.6 acres in size, as residential for the western one-third of Site IR02 and industrial for the eastern two-thirds of Site IR02. The RAP/ROD identified the selected remedies for Site IR02 as excavation of PCB and cadmium impacted shallow soils at both of these two portions of Site IR02 typically to depths of about one foot below existing ground surface in areas where PCB and cadmium concentrations in the shallow soils of Site IR02 exceeded the cleanup levels selected for the two land use scenarios; and off-site disposal of the excavated soils. In addition, land use controls were put into effect which allow industrial use but not residential use of the eastern two-thirds of Site IR02. PCBs and cadmium remain in the shallow soils in the eastern two-thirds portion of Site IR02 above levels that would allow this portion for residential use, but at or below levels that would allow this portion for industrial use.

Based on the findings of this five-year review, the PCB and cadmium impacted shallow soil remedies for Site IR02 have been implemented as intended by the decision documents, and, the completed remedies continue to meet the remedial action objectives (RAOs), and appear to provide the means for adequately protecting human health and the environment at Site IR02 with respect to PCB and cadmium impacted shallow soils.

Concentrations of PCBs and cadmium in shallow soils of Site IR02 have been reduced to levels acceptable for the two planned land use scenarios identified for Site IR02, suitably

addressing the threats to human health and the environment at Site IR02 through removal of unsuitable PCB and cadmium impacted shallow soils to regulated off-site disposal facilities. Land use controls in effect clearly delineate the planned residential and industrial use portions of Site IR02. The Catellus Development Corporation's Site Management Plan in use at Site IR02 provides guidelines for conducting the redevelopment of Site IR02 in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment.

Technical or physical issues related to the remedies implemented for PCB and cadmium impacted shallow soils at Site IR02 that would be likely to reverse the current conditions were not discovered in this five-year review.

On the basis of the findings of this five-year review, conducting further five-year reviews for the remediated PCB and cadmium impacted shallow soils of the residential use portion of Site IR02 was not found to be warranted. Following the successful completion of remedy implementation, this portion of Site IR02 has been accepted by the regulatory oversight agencies as being suitably remediated with respect to PCB and cadmium impacted shallow soils.

Land use controls have been put into effect for the eastern two-thirds portion of Site IR02 which is currently being developed under an industrial use scenario. This portion of Site IR02 has not been accepted by the regulatory oversight agencies as being suitable for unrestricted exposure and unlimited use, without restrictions, with respect to PCB and cadmium impacted shallow soils.

On the basis of the observations and findings of this five-year review, unless new information related to human health and environmental risks as currently understood to be potentially posed by PCB and cadmium concentrations remaining in shallow soils in the planned industrial use portion of Site IR02 is identified that would no longer require restricting exposure of residents, workers or the environment to these soils, or, if in the future it is decided to develop this portion of Site IR02 for residential use and additional shallow soil remediation is performed, conducting the next five-year review of the land use controls currently in effect for the industrial use portion of Site IR02 is recommended.

As such, the next Statutory Five-Year Review of land use controls remedy currently in effect for the eastern two-thirds industrial use portion of Site IR02 needs to be completed within the next five years, or before June 2011.

The DON intends to prepare a Land Use Controls Remedial Design (LUC RD) for Site IR02 in fiscal year (FY) 2006. The LUC RD will develop protocols for the enforcement and monitoring of land use restrictions implemented at the eastern, planned industrial use portion of Site IR02 with respect to PCB and cadmium impacted shallow site soils.

Documents reviewed and interviews conducted for this five-year review indicated the existence of environmental issues for Site IR02 other than PCBs and cadmium in shallow site soils. Some of these Site IR02 environmental issues have been resolved in the past. Other environmental issues are currently being addressed. Even though these

environmental issues were not a part of this five-year review for PCB and cadmium impacted shallow soils of Site IR02, collectively, these issues appear to have an impact on final decisions related to an overall unrestricted use potential of the western one-third of Site IR02. As such, these environmental issues are summarized below.

The 1996 Site IR02 Remedial Investigation results indicated the presence of lead in soils of an area south of Building 365 within Site IR02, with concentrations ranging up to 26,600 mg/kg, and an estimated volume of 150 cubic yards. This area was remediated in 1996 to a risk-based lead cleanup level of 324 mg/kg. About 240 cubic yards of soil were removed and disposed off-site. When a confirmatory sample showed that lead remained along the western sidewall at concentrations above 324 mg/kg, an additional 5 cubic yards was removed and disposed off-site. The five final confirmation samples verified that the cleanup level of 324 mg/kg lead had been achieved.

Remedial excavations in a portion of the planned residential use area of Site IR02 uncovered the remains of what appeared to be various types of instruments. Because of the concern that instrument dials used during the World War II era sometimes used radium paint for illumination, further investigation was conducted at this location to ascertain whether radiation associated with radium was present in these soils. All the soils that had been excavated from within this area were spread out in a 1-foot thick layer and screened with a gamma scintillation detector capable of detecting radiation emitted by radium. There were no detections of radiation above background.

In its letter dated February 27, 2004 to the DON, the DTSC acknowledged its receipt and review of the final closeout report dated December 26, 2001 for Site IR02 shallow soil remediation. The DTSC in its letter also stated that the California Department of Health Services had reviewed the DON's findings of the radiological survey DON had conducted at Site IR02, and on November 13, 2003 it had notified the DTSC that with respect to radiological issues, Site IR02 was acceptable for unrestricted release.

Polyaromatic hydrocarbons (PAHs) have been reported in the historical fill materials underlying Site IR02 and FISCA, at concentrations that can cause restrictions of the use of portions of these properties for residential purposes.

A groundwater plume containing benzene and naphthalene has been reported to exist beneath Site IR02 and FISCA. Environmental restriction agreements exist between the DON and the City of Alameda and the DTSC dated July 20, 2000, which prohibit the use of shallowest groundwater beneath Site IR02 and FISCA until this groundwater has been suitably remediated. Groundwater benzene and naphthalene issues for Site IR02 are currently being addressed under separate environmental assessments and documents. The DTSC has stated that regulatory acceptance and concurrence for overall unrestricted use of the western one-third portion of Site IR02 would be dependent on the satisfactory resolution of these remaining environmental issues for Site IR02.

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3 Final Confirmation Sample Results and Excavation Depths, Removal of Contaminated Soils at Site IR02 (adapted from Final Closeout Report dated December 26, 2001)

ATTACHMENTS

ATTACHMENT

A Listing of Site IR02 Related Documents Included In This First Five-Year Review

B Site Inspection Form, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

C Photographs of Site IR02 Taken During Site Inspection on May 10, 2005, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

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D Interview Documentation Form, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

E Interview Records, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

F Applicable or Relevant and Appropriate Requirements (ARARs) Analysis Review, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

G Human Health Risk Assessment (HHRA) Review, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

H Copies of

- "Quitclaim Deed and Environmental Restrictions Pursuant to California Civil Code Section 1471 for FISC Alameda" between the Department of the Navy and the City of Alameda, dated July 17, 2000, recorded on July 20, 2000,
- "Interim Covenant to Restrict Use of Property – Environmental Restriction, Re: Fleet and Industrial Supply Center, Alameda Annex" between the Department of the Navy and the Department of Toxic Substances Control, recorded on July 20, 2000, for PCB and Cadmium Impacted Shallow Soils of Site IR02, and,
- Letter from the DTSC to DON, dated February 27, 2004, re: "Final Closeout Report, Removal of Contaminated Surface Soil at Installation Restoration Site 02 (IR02), Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA), Alameda, California".

I Responses to Review Comments, Draft and Draft Final Statutory Five-Year Review Report, PCB and Cadmium Impacted Soils Remediation, Site IR02

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ACRONYMS AND ABBREVIATIONS

ARAR	applicable or relevant and appropriate requirement
ARRA	Alameda Reuse and Redevelopment Authority
BCT	Base Closure Team
BRAC	Base Realignment and Closure
bgs	below ground surface
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
COPC	chemical of potential concern
CFR	*Code of Federal Regulations*
COC	chemicals of concern
CSF	carcinogenic slope factor
cy	cubic yard
DoD	Department of Defense
DON	Department of the Navy
DRMO	Defense Reutilization and Marketing Office
DTSC	California Environmental Protection Agency, Department of Toxic Substances Control
EBMUB	East Bay Metropolitan Utility District
ELCR	excess lifetime cancer risk
FISCA	Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex
FS	feasibility study
FSP	Field Sampling Plan
FY	fiscal year
HHRA	human health risk assessment
HI	hazard index
IR	Installation Restoration (Program)
LUC	Land Use Controls
LUCICP	Land Use Controls Implementation and Certification Plan
LUC RD	Land Use Control Remedial Design
mg/kg	milligrams per kilogram
NAS	Naval Air Station
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NPL	National Priorities List
NSC	Naval Supply Center
OSHA	Occupational Safety and Health Association
PA	Preliminary Assessment
PCB	polychlorinated biphenyl
PP	Proposed Plan
ppm	parts per million

QAPP	Quality Assurance Project Plan
RAB	Restoration Advisory Board
RAO	remedial action objective
RAP	remedial action plan
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design
RFA	RCRA Facility Assessment
RfD	reference dose
RI	remedial investigation
ROD	Record of Decision
RWQCB	Regional Water Quality Control Board
SARA	Superfund Amendment and Reauthorization Act
SI	Site Investigation
SMP	Site Management Plan
SWMU	Solid Waste Management Unit
TCLP	Toxicity Characteristic Leaching Procedure
UCL_{95}	95 percent upper confidence level
USEPA	United States Environmental Protection Agency

SUMMARY FORM

FIRST STATUTORY FIVE-YEAR REVIEW

SITE IR02 PCB and CADMIUM IMPACTED SHALLOW SOIL REMEDIATION

SITE IDENTIFICATION		
Site Name: Site IR02, Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex		
EPA ID: 2170023236		
Region: IX	**State:** CA	**City/County:** Alameda / Alameda
SITE STATUS		
NPL Status: ☐ Final ☐ Deleted ■ Other (specify) Site IR02 is **not** on the National Priorities List		
Remediation Status (choose all that apply): ☐ Under Construction ☐ Operating ■ Complete		
Multiple OUs?* ☐ YES ■NO	**Remediation Completion Date:** 11 / 05 / 2001	
Has site been put into reuse? ■YES ☐ NO		
REVIEW STATUS		
Lead agency: ☐ EPA ☐ State ☐ Tribe ■ Other Federal Agency : Department of the Navy		
Author name: Southwest Division Naval Facilities Engineering Command (SWDIV)		
Author title:	**Author affiliation:**	
Review period: 05 / 09 / 2005 to 07 / 01 / 2006		
Date(s) of site inspection: 05 / 09 / 2005 to 05 / 12 / 2005		
Type of review: ☐ Post-SARA ☐ Pre-SARA ☐ NPL-Removal only ■ Non-NPL Remedial Action Site ☐ NPL State/Tribe-lead ☐ Regional Discretion		
Review number: ■1 (first) ☐ 2 (second) ☐ 3 (third) ☐ Other (specify) _____		
Triggering action: ☐ Actual RA Onsite Construction at OU#____ ■ Actual RA Start at Site IR02 - Initiation of Remedy Implementation, July 05, 2001 ■ Other (specify): Signing of the Record of Decision, June 26, 2001 ☐ Construction Completion ☐ Previous Five-Year Review Report		
Triggering action date: 06 / 26 / 2001		
Due date ***(five years after triggering action date)***: 07 / 05 / 2006 - Remedy Implementation triggers review.		

* "OU" refers to operable unit.

SUMMARY FORM (continued)

FIRST STATUTORY FIVE-YEAR REVIEW

SITE IR02 PCB and CADMIUM IMPACTED SHALLOW SOIL REMEDIATION

Issues, Recommendations and Follow-up Actions:

This five-year review did not discover issues relative to the performance of the PCB and cadmium impacted shallow soil remedies implemented at Site IR02. Shallow soils with PCBs and cadmium exceeding cleanup levels selected for the two planned land use scenarios (residential use of the western portions and industrial use of the eastern portions) have been removed from Site IR02. The site is under development in accordance with decision documents and under the oversight of regulatory agencies; the residential and industrial use portions of Site IR02 have been clearly delineated. Site conditions that could result in having potential adverse effects on the future protectiveness of the remedies were not observed.

On the basis of the findings of this five-year review, conducting further five-year reviews of the remediated shallow soils of the residential use portion of Site IR02, with respect to PCB and cadmium impacted shallow soils, was not found to be warranted. Following the successful completion of remedy implementation, this portion of Site IR02 has been accepted by the regulatory oversight agencies as being suitably remediated with respect to PCB and cadmium impacted shallow soils.

Land use controls have been put into effect for the eastern two-thirds portion of Site IR02 which is currently being developed under an industrial use scenario. This portion of Site IR02 has not been accepted by the regulatory oversight agencies as being suitable for unrestricted exposure and unlimited use, without restrictions, with respect to PCB and cadmium impacted shallow soils. As such, conducting further five-year reviews of the land use controls remedy implemented for the eastern portions of Site IR02 is recommended, and it is required by the NCP. Accordingly, the next Statutory Five-Year Review of land use controls remedy currently in effect for the eastern two-thirds planned industrial use portion of Site IR02 needs to be completed within the next five years, or before June 2011.

The DON intends to prepare a Land Use Controls Remedial Design (LUC RD) for Site IR02 in FY 2006. The LUC RD will develop protocols for the enforcement and monitoring of land use controls remedy implemented at the eastern, planned industrial use portion of Site IR02 with respect to PCB and cadmium impacted shallow soils of Site IR02.

Protectiveness Statement:

The remedies implemented for PCB and cadmium impacted shallow soils at Site IR02 currently provide the protectiveness of human health and the environment intended by the decision documents. Concentrations of PCBs and cadmium in shallow soils of Site IR02 have been reduced to acceptable levels, suitably addressing threats to human health and the environment at Site IR02 through removal of unsuitable PCB and cadmium impacted shallow soils to regulated off-site disposal facilities. Land use controls in effect clearly delineate the planned residential and industrial use portions of Site IR02. The Catellus Development Corporation's Site Management Plan provides guidelines for conducting the redevelopment of Site IR02 in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment. Technical or physical issues related to PCB and cadmium impacted shallow soils at Site IR02 that would be likely to reverse the current conditions and the implemented remedy were not discovered in this five-year review.

Section 1
INTRODUCTION

This report presents the results of the first statutory five-year review of remedies that have been implemented at Installation Restoration (IR) Site 02 (IR02) in response to polychlorinated biphenyls (PCBs) and cadmium reported in shallow site soils. These remedies have been described and published in Site IR02 Remedial Action Plan/Record of Decision (RAP/ROD) dated June 25, 2001. This decision document was approved by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) on June 26, 2001. Site IR02 is located at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA), Alameda, California (Figure 1).

The purpose of five-year reviews is to evaluate whether a remedy that has been implemented at a site remains protective of human health and the environment at that site. The methods used in assessing the implementation and performance of the selected remedy, as well as the findings and conclusions of these evaluations are documented in five-year review reports.

A five-year review report provides a clear statement as to whether the selected remedy is being protective, or if it is expected to become protective sometime in the future. In the event a five-year review finds deficiencies to exist in remedy implementation or in the performance of the remedy itself which could lead to non-protectiveness of human health and the environment, the five-year review report would identify such issues, and provide recommendations as to how these issues can be resolved. Similarly, if the five-year review finds that assumptions, regulatory requirements and/or analytical methods used to establish cleanup goals for the chemicals of concern at the time of selecting and implementing the remedy have changed during the five years covered by the review, which could lead to non-protectiveness of human health and the environment, then the five-year review would identify such changes and provide recommendations as to how to address such issues. As such, the five-year review report would contain recommendations of specific actions that would provide the means for the remedy to become or to continue being protective.

Five-year reviews are required by statue in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (Title 42 *United States Code* 9601), commonly referred to as the "Superfund," as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. CERCLA §121(c), as amended, states:

> *"If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each five years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented."*

Additionally, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Title 40 *Code of Federal Regulations* [CFR] §300.430(f)(4)(ii) states:

> *"If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the lead agency shall review such action no less often than every five years after the initiation of the selected remedial action."*

The Department of the Navy (DON) has interpreted these regulations as requirements for a five-year review when hazardous substances, pollutants, or contaminants remain at a site above levels that would allow for unlimited use and unrestricted exposure, and, if the RAP/ROD for the site was signed on or after October 17, 1986, when SARA was promulgated. The DON defines 'unlimited use' and 'unrestricted exposure' to mean no restrictions placed on the use of a site.

As such, the DON has undertaken the preparation of this statutory five-year review of the remedies implemented for mitigating PCB and cadmium impacted shallow soils of Site IR02 because the selected remedies include restrictions of two-thirds of Site IR02 to industrial use and do not allow its unrestricted use as PCB and cadmium concentrations remain in the shallow soils in this portion of Site IR02 above levels that would allow for its unlimited use and unrestricted exposure. CERCLA requires five-year reviews of remedies that include site use restrictions. Additionally, the RAP/ROD for Site IR02 was signed in June 2001, after promulgation of SARA.

This is the first five-year review of the remedies implemented for PCB and cadmium impacted shallow soils of Site IR02. The triggering action for this review was the signing of the Site IR02 RAP/ROD in June 2001. This five-year review was conducted by the DON between May 2005 and May 2006.

This five-year review report is divided into ten sections and nine attachments, as described below.

Section 1 - an introduction into five-year reviews in general, and to this five-year review in particular.

Section 2 - a chronology of events related to Site IR02 PCB and cadmium impacted shallow soil evaluations and remediation.

Section 3 - Site IR02 background information, including physical setting, land and resource use, history of contamination, initial response, and the basis for taking remedial action.

Section 4 - remedy selection and implementation for the PCB and cadmium impacted shallow soils of Site IR02.

Section 5 - progress made since the last five-year review.

Section 6 - typical activities performed as part of a five-year review process, and the findings of this five-year review, including community involvement, the results of document and data review, site inspection, and interviews.

Section 7 - technical assessment of the remedies implemented at Site IR02.

Section 8 - issues identified, as well as conclusions, and recommendations as to how these issues can be resolved.

Section 9 - protectiveness statement for the remedies implemented for mitigation of PCB and cadmium impacted shallow soils of Site IR02.

Section 10 - discussion of the next five-year review.

The following attachments are appended in support of and for completeness of this five-year review:

Attachments

A Listing of Site IR02 Documents Included In This First Five-Year Review

B Site Inspection Form, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

C Photographs of Site IR02 Taken During Site Inspection on May 10, 2005, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

D Interview Documentation Form, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

E Interview Records, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

F Applicable or Relevant and Appropriate Requirements (ARARs) Analysis Review, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

G Human Health Risk Assessment (HHRA) Review, First Five-Year Review, PCB and Cadmium Impacted Shallow Soils Remediation, Site IR02

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- Letter from the DTSC to DON, dated February 27, 2004, re: "Final Closeout Report, Removal of Contaminated Surface Soil at Installation Restoration Site 02 (IR02), Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA), Alameda, California".

I Responses to Review Comments, Draft and Draft Final Statutory Five-Year Review Report, PCB and Cadmium Impacted Soils Remediation, Site IR02

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Section 2
CHRONOLOGY OF SITE EVENTS

Important and relevant information on historical site development, environmental investigation, remedial planning, and remedial action events in connection with PCB and cadmium impacted shallow soils of Site IR02 and the dates of these events are listed below in chronological order. These events typically include site assessment, preparation of decision documents, and remedial actions.

CHRONOLOGY OF SITE EVENTS
PCB and Cadmium Impacted Shallow Soils of Site IR02

Event	Date
The property occupied by Alameda Facility/Alameda Annex (FISCA), which includes Site IR02, and surrounding area exists as undeveloped marshlands and tidal flats along the fringe of San Francisco Bay.	Prior to 1920's
The marshlands are covered with imported fill comprising sands and clays of unknown origin.	1925 - 1927
The developed area is used as a commercial airport.	1920 - 1941
US Government purchases the property for use as a depot.	1941 (Alameda Facility) and 1966 (Alameda Annex)
Command of Alameda Facility property transferred to Naval Supply Center (NSC) Oakland.	1964
Alameda Annex property transferred to NSC Oakland.	1980
The Defense Reutilization and Marketing office (DRMO), in conjunction with NSC Oakland, operates a screening lot and temporary equipment storage area on the western portion of area known today as Site IR02, and a scrap yard for temporary storage of discarded automobiles, stockpiling of scrap metal, and storage of surplus equipment on the eastern portion of Site IR02.	Until 1998
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as 'Superfund' is promulgated.	1980
Department of the Navy (DON) begins investigating sites under its Installation Restoration (IR) Program.	1980's
Superfund Amendments and Reauthorization Act (SARA) amends CERCLA.	1986
A Site Investigation (SI) is conducted by the DON at the area today known as Site IR02. The SI included review of aerial photographs, and collection and laboratory analyses of shallow soil samples from depths of 18 to 30 inches below ground surface. PCBs and cadmium were detected in the soil samples. The SI identified four areas on the site as potential sources of contamination; these areas appeared to be associated with then-ongoing DRMO activities.	1987
A Preliminary Assessment (PA) is conducted at the area today known as Site IR02. The PA did not collect or analyze soil samples, but reviewed available records, and included a site visit, and interviews with employees. The PA found that activities at this site may have impacted the environment, and recommended additional investigations.	1988
The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) conducts a Resource Conservation and Recovery Act (RCRA) Facility Assessment (RFA) at FISCA. The RFA identified four solid waste management units (SWMUs). The screening lot and scrapyard area used by DRMO was designated as SWMU 1 (today known as Site IR02), and was recommended for additional investigation.	1993

CHRONOLOGY OF SITE EVENTS

PCB and Cadmium Impacted Shallow Soils of Site IR02

Event	Date
Final Remedial Investigation (RI) report for FISCA is issued. The RI reported that site-use related soil contamination had been limited in general to the upper one foot of soil, and designated three specific areas within SWMU 1 (Site IR02) as candidates for interim remedial action. The shallow soils within SWMU 1 appeared to have been impacted by the screening lot and scrap yard activities, and included polychlorinated biphenyls (PCBs) and cadmium. The RI recommended that SWMU 1 be further considered in a Feasibility Study with respect to soil contamination and potential remedial action alternatives because of potential human health concerns associated with the source and extent of the chemicals identified in shallow site soils, and, because of the need for further evaluation of potential human health and ecological risk concerns that may be posed by these chemicals. California Regional Water Quality Control Board (RWQCB) and the DTSC identified interim cleanup goals for PCBs in soil as 1 milligram/kilogram (mg/kg).	January 1996
First removal action – involved removal of surface soils near Building 366, that was once located on the eastern portions of Site IR02. About 80 cubic yards of surface soils with PCB concentrations up to 140 mg/kg were removed from an area west of Building 366 and disposed off-site, achieving the interim cleanup goal for PCB.	1996
Second removal action – About 84 cubic yards of surface soils with PCB concentrations up to 29 mg/kg were removed from an area in the south-central portions of Site IR02 next to a railroad track, and disposed off-site, achieving the interim cleanup goal for PCB.	1998
FISCA is closed under the Base Realignment and Closure (BRAC) Act of 1990.	September 30, 1998
Final Feasibility Study (FS) report for FISCA is issued. The FS developed, screened and evaluated potential remedial actions that could be implemented at Site IR02 as a means for reducing human health risks that may be posed by the chemicals of concern that the RI identified in Site IR02 shallow soils. At the request of the regulatory agencies, the FS recalculated risks for some of the chemicals of concern in Site IR02 shallow soils on account of receiving new data since the original human health risk assessment (HHRA). PCBs and cadmium in shallow soils of Site IR02 were retained as the chemicals of concern and targeted for remediation.	January 22, 1999
Design basis report for removal of contaminated surface soils at Site IR02 is issued. The report presented the design basis for remedial action, and presented alternative methods for defining the limits of contaminated shallow soils that exceed the cleanup goals and as such that would be removed under the remedial action.	January 31, 2000
DON and the City of Alameda execute a 'Quitclaim Deed and Environmental Restrictions Pursuant to California Civil Code Section 1471 for FISC Alameda' wherein the DON transfers the Fleet and Industrial Supply Center Oakland (FISCO), Alameda Facility/Alameda Annex, which includes Site IR02, to the City of Alameda. Interim restrictions for Site IR02 state that the site shall not be used for residential purposes and construction activities shall not begin until the DON and the DTSC have determined that the soils containing PCBs and cadmium concentrations have been properly remediated and that the DON has recorded a release terminating these Interim Restrictions.	July 17, 2000

CHRONOLOGY OF SITE EVENTS

PCB and Cadmium Impacted Shallow Soils of Site IR02

Event	Date
DON and the DTSC execute an 'Interim Covenant to Restrict Use of Property (Environmental Restriction)' for the Fleet and Industrial Supply Center, Alameda Annex, which includes Site IR02, wherein the use of Site IR02 is restricted on an interim basis to protect human health and the environment. The Covenant anticipates that some or all of its Interim Restrictions may become unnecessary after adequate investigation and remediation of Site IR02.	July 17, 2000
DON issues its Proposed Plan (PP) for remediating PCB and cadmium impacted shallow soils at Site IR02 and invites public input into selection of the final remedy. The PP presented six potential remedial action alternatives and identified the preferred remedy as Alternative 4 – Excavation and Off-site Disposal and Land Use Controls.	April 2001
Final Remedial Design (RD) for removal of PCB and cadmium impacted shallow soils at Site IR02 based on the conclusions of the design basis report is issued.	May 09, 2001
Final Workplan, Final Quality Control Plan, and Final Site Safety and Health Plan are issued.	May 09, 2001
Final Field Sampling Plan and Final Quality Assurance Project Plan (FSP/QAPP) are issued. These plans contain descriptions of methods for collecting soil samples to further define areas of Site IR02 that previous investigations had shown as exceeding cleanup levels and as such requiring removal, and, methods for collecting confirmation samples of soils remaining following the removal action to asses the effectiveness of the remedy in removing the soils with chemical concentrations exceeding cleanup goals.	May 14, 2001
Final remedial action activities begin at Site IR02 – the site is surveyed and divided into grid squares, surface soils are sampled as defined in the FSP/QAPP.	May 14, 2001
Soil sampling is completed.	May 22, 2001
Laboratory analyses of soil samples are completed.	June 11, 2001
The DON and the State of California (DTSC and RWQCB) sign the Remedial Action Plan/Record of Decision (RAP/ROD). The RAP/ROD states that consistent with and supported by the Final Feasibility Study of January 1999 for Site IR02 soils, the DON and the DTSC, with the concurrence of the RWQCB, have selected excavation of Site IR02 shallow soils containing PCBs and cadmium in concentrations exceeding cleanup goals, and disposal of the excavated soils in a permitted off-site landfill. According to the RAP/ROD, the western approximately one-third of Site IR02 would be developed for residential use and the eastern approximately two-thirds of Site IR02 would be developed for industrial and commercial use. Selected residential use cleanup goal for PCBs is 1 part per million (ppm), and for cadmium it is 12 ppm. Selected industrial use cleanup goal for PCBs is 10 ppm, and for cadmium it is 450 ppm. The RAP/ROD states that upon completion of the remedial action, the Interim Restrictions prohibiting residential use of Site IR02 established in the Quitclaim Deed for FISCO Alameda dated July 17, 2000 shall be released for the western one-third of Site IR02, which is the planned residential portion of Site IR02, but will be retained for the eastern two-thirds of Site IR02. The RAP/ROD further states that the Interim Covenant executed with the DTSC, dated July 17, 2000, shall release its restrictions for the western one-third of Site IR02 which is the residential portion of Site IR02. The Covenant restrictions shall continue to be in effect for the eastern two-thirds of Site IR02 which is the industrial and commercial portion of Site IR02.	June 26, 2001
Remedial soil removal activities begin.	July 05, 2001
Backfilling of excavated areas begin.	October 24, 2001

CHRONOLOGY OF SITE EVENTS

PCB and Cadmium Impacted Shallow Soils of Site IR02

Event	Date
Remedial soil removal and confirmation soil sampling activities are completed.	November 05, 2001
Backfilling of excavated areas is completed.	November 06, 2001
Air monitoring for dust conducted at site perimeter during excavation and backfilling activities	July 06, 2001 through November 08, 2001
Final Closeout Report is issued. The report provides a description of PCB and cadmium impacted shallow soil remedial actions taken at Site IR02, and concludes that confirmation soil samples collected and analyzed after the completion of soil removal activities have shown that PCB and cadmium cleanup goals as approved in the RAP/ROD have been achieved; that the western one-third of Site IR02 is ready for unrestricted residential use with respect to PCB and cadmium impacted shallow soils (now remediated); that the eastern two-thirds of Site IR02 is ready for unrestricted commercial and industrial use but restricted from residential use; and that no further remedial action is planned to be undertaken on the shallow soils at either area.	December 26, 2001
Site Management Plan (SMP) for Site IR02 is issued by Catellus Development Corporation, the developer of the former FISCA. The SMP provides guidelines and the means for redevelopment of Site IR02 in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment. Regulatory oversight of implementing this SMP would be provided by the DTSC and the City of Alameda.	April 23, 2002
DTSC accepts that the remedies selected for PCB and cadmium impacted shallow soils of Site IR02 have been suitably implemented.	February 27, 2004
First Five-Year Review	May 2005 – April 2006
Site Inspection for first five-year review	May 10, 2005
Document and data review for first five-year review	May 10 – June 24, 2005
Interviews for first five-year review	May 10 – June 24, 2005
Draft first five-year review report for PCB and cadmium impacted shallow soils of Site IR02 is issued for review and comments	August 2005
Draft Final first five-year review report for PCB and cadmium impacted shallow soils of Site IR02 is issued for review and comments	March 2006
Final first five-year review report for PCB and cadmium impacted shallow soils of Site IR02 is issued	April 2006
Fact Sheet for the first five-year review report for PCB and cadmium impacted shallow soils of Site IR02 is issued	May 2006
Public Notice for the first five-year review report for PCB and cadmium impacted shallow soils of Site IR02 is issued	May 2006

Section 3
SITE BACKGROUND

Site IR02 is located in the south-central portion of FISCA which in turn is located in the City of Alameda, adjacent to and east of the former Naval Air Station (NAS) Alameda, along the southern shore of the Oakland Inner Harbor in Alameda, California. Since 1998, FISCA has been closed and Site IR02 has been enclosed by a chain-link fence.

This section presents Site IR02 background information, including physical setting, land and resource use, history of contamination, initial response, and the basis for taking remedial action in response to PCBs and cadmium reported in the shallow soils of Site IR02 at the time when the Site IR02 RAP/ROD was signed. The discussions and information presented in this section include major site activities undertaken prior to and following the signing of the RAP/ROD, with the intent of providing a basis for comparing the performance of the remedies implemented at Site IR02 with the conditions potentially posed by the PCB and cadmium impacted shallow soils of Site IR02 that the remedies were intended to mitigate.

3.1 PHYSICAL SETTING

Site IR02 occupies approximately 10.6 acres in the south-central portion of FISCA property (Figure 1), which itself occupies about 143 acres and has served during its operation as part of the main supply facility supporting U.S. Department of Defense (DoD) operations of military fleets and shore activities in the Pacific Basin.

Site IR02 is essentially level and unpaved, and enclosed by a chain-link fence. Surface and near-surface soils at FISCA consist of areal fill placed during historical filling of the tidal marshlands, now underlying Site IR02, and fill placed for subsequent site grading for Site IR02 development. The historical fill material is characterized by sands, clays, and silts dredged from the tidal flats in the region.

Site IR02 is located in the City of Alameda, and according to the Site IR02 RI report, it was zoned as general industrial at the time when it was in operation. The areas surrounding Site IR02 were occupied by harbor facilities, commercial and industrial properties, residential developments, and schools.

FISCA property is part of the greater ecosystem of San Francisco Bay, which is the largest coastal embayment on the Pacific Coast and home to a diverse ecological community. Aquatic areas are present on the northern portion of the property, which borders the Oakland Inner Harbor. Four species, classified as endangered by both state and federal governments, inhabit the vicinity of the Oakland Inner Harbor: the California least tern, the peregrine falcon, the California brown pelican, and the winter run Chinook salmon. Although birds, including California brown pelicans, double-crested cormorants, and several species of gulls, and harbor seals have been observed in the area of the Oakland Inner Harbor, these species do not nest or feed in the area of Site IR02, because there is no supporting habitat on the site.

3.2 LAND AND RESOURCE USE

Until the 1920s, FISCA and the surrounding area existed as undeveloped marshlands and tidal flats along the fringe of San Francisco Bay. The area south of FISCA consisted primarily of residential properties. Before 1930, at least two large industrial sites (an oil refinery and a borax processing plant) were located on the western tip of Alameda Island. Several industries were located on the northern side of Oakland Inner Harbor, including two manufactured gas plants. Land use has been industrial since the land was created using imported fill between 1887 and 1939.

The Defense Reutilization and Marketing Office (DRMO) operated a screening lot and scrap yard at Site IR02 until 1998. DRMO was responsible for the sorting, resale, and proper disposal of property declared to be excess by the Department of Defense (DoD). Surplus equipment that was transferred to Site IR02 for processing may have contained fuel, oil, coolants, and other liquids that may have leaked onto exposed surface soil.

The western portion of Site IR02 was used as a screening lot and for temporary equipment storage. The eastern portion of Site IR02 was used as a scrap yard and for temporary storage of discarded automobiles, stockpiled scrap metal, and surplus equipment. An aboveground diesel tank in the northern central section of Site IR02 was used to fuel heavy equipment.

The Oakland Inner Harbor, located north of Site IR02, contained a ferry terminal, shipyards, several marinas, and yacht clubs. The area east of Site IR02 contained commercial and industrial properties. The area south of Site IR02 contained residential developments, including base housing, a child development center, several elementary schools, a middle school, and the College of Alameda. The area west of Site IR02 was occupied by Naval Air Station (NAS) Alameda and included base housing, a day care facility and public schools as well as industrial properties.

FISCA has undergone base closure on September 30, 1998. The Navy transferred title to the property to the City of Alameda on July 17, 2000 pursuant to an Economic Development Conveyance (EDC) conducted as an early transfer under CERCLA Section 120 (h)(3). As part of the overall plan for redevelopment of the property, the Alameda Reuse and Redevelopment Authority (ARRA) has determined that the western one-third of Site IR02 would be developed for residential use and the eastern two-thirds of Site IR02 would be developed for industrial use.

At the time of this five-year review site inspection (May 2005), structures which at one time had occupied Site IR02 had been removed. Redevelopment related construction activities were underway and included site grading and infrastructure construction. The area south of Site IR02 had been cleared and leveled. New detached individual family housing as well as a school was in construction further south of Site IR02 at the former East Housing Area that belonged to the former NAS Alameda, located south and west of Site IR02 and contained residential as well as commercial properties. Land use in areas east and north of Site IR02 have remained essentially unchanged.

3.3 HISTORY OF CONTAMINATION

Contamination of Site IR02 soils was discovered as a result of site investigations following CERCLA when the DON began investigating sites under its IR Program in the 1980s. Eight IR sites were identified at FISCA as a result of a preliminary assessment/site investigation (PA/SI) under CERCLA and a Resource Conservation and Recover Act (RCRA) Facility Assessment (RFA). Site IR02, then known as Solid Waste Management Unit (SWMU) 1, was one of these eight sites.

The SI conducted at Site IR02 in 1987 as part of the IR Program included a review of aerial photographs, and collection of 30 shallow soil samples. The soil samples were analyzed for various chemical compounds, including priority pollutant metals and PCBs. The results of the SI soil sample analyses indicated that concentrations of metals and organic compounds were highest in soil samples collected near Building 365. PCBs were detected in 3 out of 30 soil samples.

Four areas within Site IR02 were identified as potential contamination sources. These areas appeared to be associated with DRMO operations and activities. A review of historical aerial photographs of Site IR02 conducted as part of the SI confirmed that the four areas where DRMO operations have been concentrated have had visible soil staining since the 1950s. These areas included the vicinity of Building 365, a scrap bin area adjacent to railroad tracks along the southern boundary of Site IR02, an area west of Building 366, and a storage area just west of the main entrance gate, on the northern boundary of Site IR02 (Figure 2).

A Remedial Investigation (RI) was conducted at seven of the eight IR sites within FISCA, including Site IR02. Phase I RI (June to November 1992) focused entirely on Site IR02 and included soil sampling and analysis. Phase II RI (March to September 1994) collected additional soil samples at Site IR02.

RI results indicated the presence of PCBs and metals in Site IR02 soils. At an area west of Building 366 PCB concentrations in soil were reported up to 140 mg/kg, with an estimated volume of about 115 cubic yards. Another area was identified along railroad tracks located in the southern portions of Site IR02, containing PCBs above regulatory action concentrations in soil, with an estimated volume of 360 cubic yards.

The findings of the RI were of concern for the DON and it concluded that PCB and cadmium concentrations reported in shallow soils of Site IR02 could pose an unacceptable risk to human health under the then-existing and future planned use of Site IR02: residential on the western one-third and industrial on the eastern two-thirds. Further, both the Interim Covenant executed between the DON and the DTSC in July 2000 and the Quitclaim Deed executed between the DON and the City of Alameda in July 2000 prevented the use of Site IR02 for residential purposes until it was suitably remediated.

3.4 INITIAL RESPONSE

As a result of Site IR02 RI findings, it was determined that two removal actions would be undertaken at three locations within Site IR02, targeting the interim cleanup goals identified by the Regional Water Quality Control Board (RWQCB) and the DTSC. The first removal action, conducted in 1996, involved removal of contaminated soils from an area west of Building 366, with PCBs reported at concentrations up to 140 mg/kg until the interim cleanup level of 1 mg/kg was achieved. About 75 cubic yards of soil was removed. When a confirmatory sample showed that PCBs remained at concentrations above 1 mg/kg along the western sidewall of the excavation, another 5 cubic yards were removed from this location and disposed off-site. Laboratory analyses of the final five confirmation samples did not report PCB concentrations exceeding the detection limit of 0.033 mg/kg, verifying that the interim cleanup level of 1 mg/kg for PCBs had been achieved.

A second removal action was completed in 1998 in an area in the south-central portion of Site IR02, where soils with PCB concentration of 29 mg/kg had been reported at a depth of 7 feet below ground surface (bgs). This soil sample had been collected near the location of a sump next to a railroad track. About 84 cubic yards of soil was removed from here and disposed off-site. Confirmation samples verified that the cleanup level of 1 mg/kg for PCBs had been achieved.

3.5 BASIS FOR TAKING ACTION

The Site IR02 RI results had indicated that PCBs and metals were present in Site IR02 shallow soils. A human health risk assessment (HHRA) was conducted in connection with these chemical compounds. An updated risk assessment was conducted in January 1999 as part of the Site IR02 Feasibility Study (FS) at the request of the regulatory agencies to accommodate changes in established toxicity values and exposure parameters since the initial HHRA.

The baseline risk assessment estimated the risks the site would pose if no action were taken. It provided the basis for action and identified the contaminants and exposure pathways that would need to be addressed by the remedial action.

Chemicals of potential concern (COPCs) identified in the shallow soils of Site IR02 included PCBs and metals. These chemical compounds appeared to have originated from the screening lot and scrap yard activities once conducted on Site IR02. Chemicals of concern (COCs) were then derived from these COPCs.

The COPCs reported in Site IR02 soils at the conclusion of the RI were evaluated for human health risks and hazards expressed as excess lifetime cancer risk (ELCR) for carcinogenic compounds, and as a hazard index (HI) for non-carcinogenic compounds. Any COPC found to have an ELCR greater than 10^{-6} or an HI of greater than 1.0 was considered to be a COC. The NCP defines unacceptable risk levels as contaminant concentrations that exceed an ELCR of 10^{-4}, as such, some COC concentrations fell within the 10^{-4} to 10^{-6} target risk management range. For COCs within this target risk

range, risk management decisions were made to determine whether remedial action would be warranted to address these COCs.

Several metals that exceeded the ELCR or HI were determined not to be COCs, because they were present at concentrations that were equal to or below ambient levels found at the College of Alameda, located just south of Site IR02. The College of Alameda is part of an existing residential development that has never been used for commercial or industrial purposes, and neither has it been used by the DON. Soil samples collected from the college property, while not necessarily representative of natural background levels, were used as reference samples with which to compare samples from the historically industrial setting of Site IR02. To make the COC determination regarding metals, the upper 95 percent confidence level (UCL_{95}) of the value of the mean UCL_{95} of each metal was compared with the UCL_{95} of the same metals at the College of Alameda. Metals were eliminated as COC if their UCL_{95} was less than the UCL_{95} at the college property.

The HHRA exposure assessment identified pathways by which contaminants could be released from Site IR02 soils into the environment. The exposure assessment also identified human receptors that could be exposed to these contaminants.

The following exposure pathways were evaluated for PCB and cadmium impacted shallow soils of Site IR02: inhalation of dust and volatilized contaminants, soil ingestion, dermal contact with contaminated soil, and ingestion of produce grown in contaminated soil.

The potential for carcinogenic and noncarcinogenic human health effects under current and future exposure scenarios were evaluated. Potential receptors for current land use were off-site residential receptors (adults and children) and on-site industrial receptors (site workers and construction workers). Off-site residential receptors were only evaluated for the dust inhalation pathway. Current exposure scenarios evaluated were limited to shallow soils ranging in depths from 0 to 0.5 foot below existing ground surface. Potential receptors considered for future land use were on-site residents (adults and children), site workers, and construction workers. Future exposure scenarios were evaluated for the soil from ground surface to the groundwater table to allow for new construction and excavation activities. No sensitive subpopulations, such as farm families or subsistence fishermen, were identified at Site IR02.

Toxicity factors, including carcinogenic slope factors (CSFs) for estimating risk, and reference dose (RfD) for estimating HI, were used to quantitatively evaluate chemical toxicity. These toxicity factors are updated by the United States Environmental Protection Agency (USEPA) when new or revised chemical toxicity information becomes available. The CSFs for PCBs that have been revised since the HHRA presented in the final RI were incorporated into the FS. More specifically, at the request of the regulatory agencies, the FS recalculated risks for some of the COCs in Site IR02 shallow soils on account of receiving new data since the original HHRA. PCBs and cadmium in shallow soils of Site IR02 were retained as the COCs and targeted for remediation.

Three PCB isomers were identified as COCs in the surface soils of Site IR02: Aroclor 1016, Aroclor 1254 and Aroclor 1260. Slope factors for these COCs were derived from USEPA's "PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures". The original HHRA used a cadmium oral RfD for water of 5.0E-04 mg/kg/day in the evaluation of exposure to soil. A more appropriate oral RfD developed for consumption of food, 1.0E-3 mg/kg/day was used in the updated risk assessment to evaluate exposure to cadmium in soil and in garden produce.

After completion of shallow soil removal actions performed at Site IR02 in 1998, the RI database was updated to reflect the risk reduction achieved by these removal actions. Chemical concentration data representing the soils that were excavated and disposed off-site were removed from the database. The updated database was then used to estimate risk and to map locations of remaining contaminants. The final soil COCs for Site IR02 shallow soils were cadmium and PCBs.

A qualitative ecological risk assessment conducted as part of the RI concluded that there were no endangered species present at Site IR02, and that limited and unsuitable habitat, a scarcity of mammalian receptors, and site soil conditions limited the potential for adverse effects to terrestrial biota. The risk assessment recommended no further evaluation or action for terrestrial habitats or associated ecological receptors.

On the basis of these findings, the DON and the regulatory oversight agencies agreed that the response action identified in the Site IR02 RAP/ROD, removal of PCB and cadmium impacted shallow soils of Site IR02 and off-site disposal of these soils, would provide the means to protect the public health and welfare, and the environment from actual or threatened releases of PCBs and cadmium reported in Site IR02 shallow soils into the environment.

Section 4
REMEDIAL ACTIONS

This section provides discussions of remedial action implementation history for the PCB and cadmium impacted shallow soils of Site IR02. It presents descriptions of relevant site activities beginning with the signing of the RAP/ROD for the PCB and cadmium impacted shallow soils of Site IR02 to the present, and includes discussions of remedy selection and implementation, remedy performance, and the current status of the remedy.

4.1 SELECTED REMEDIES

The 1966 RI reported that with respect to PCB and cadmium impacted shallow soils of Site IR02, existing risk of cancer to future site workers was greater than 1.0E-04 for exposure to PCBs, and the existing non-cancer risk hazard index was greater than 1.0 for exposure of future site workers to cadmium. The results of the Site IR02 HHRA had shown that the principal threats to human health under future industrial and residential land use scenarios would be expected to come from dermal contact with soil, as well as inhalation and ingestion of soil, and that these threats would come from PCBs and cadmium reported in shallow soils of Site IR02.

The RI also reported that there were no unacceptable risks to ecologic receptors, and, as such, the only action required was to address the human health risks. The Site IR02 FS reported that development of remedial action objectives (RAOs) was necessary for PCBs and cadmium in surface soils to address these risks.

RAOs developed and presented in the Site IR02 Remedial Design (RD) document required establishing cleanup goals for PCBs and cadmium in soils and, reducing exposure to soils that contained these chemicals with concentrations exceeding the established cleanup goals.

The Site IR02 RAOs are to prevent:

- ingestion of, direct contact with, or inhalation of PCB impacted shallow soils (0 to 1 foot below existing ground surface) by future residents in excess of concentrations that exceed an ELCR of 10^{-4},
- ingestion of, direct contact with, or inhalation of PCB impacted shallow soils (0 to 1 foot below existing ground surface) in excess of concentrations that exceed an ELCR of 10^{-4}, and
- ingestion of or direct contact with cadmium impacted shallow soils (0 to 1 foot below existing ground surface) by future residents in excess of concentrations that exceed a hazard quotient of 1.

The DON and the State of California signed the RAP/ROD for the PCB and cadmium impacted shallow soils of Site IR02 on June 26, 2001. The RAP/ROD required that the RAOs identify and remove soils that exceed cleanup levels for PCBs and cadmium, which would allow residential use of the western one-third portion of Site IR02 and industrial use of the eastern two-thirds portion of Site IR02 with respect to PCB and cadmium impacted shallow soils (Figure 2). The RAP/ROD also required that the DON

implement land use controls which would prevent future redevelopment of the industrial use portion of Site IR02 for residential use for as long as PCB and cadmium concentrations in shallow soils of Site IR02 remained above residential use cleanup levels.

The cleanup levels selected for PCBs and cadmium in shallow soils of Site IR02 are as follows.

COC	Residential Cleanup Level (milligram per kilogram)	Industrial Cleanup Level (milligram per kilogram)
Total PCBs	1.0	10.0
cadmium	12.0	450

The selected action for remediating PCB and cadmium impacted shallow soils of Site IR02 involved removing these soils from both the planned residential (western) area and from the planned industrial (eastern) area of Site IR02, and imposing land use controls on the industrial use portion. This remedy was selected in conformance with the planned reuse of Site IR02 as required by the Office of Solid Waste and Emergency Response Directive 9355.7-04 "Land Use in the CERCLA Remedy Selection Process," dated May 25, 1995.

In accordance with the selected remedy for the planned residential use area, soils impacted with PCBs and cadmium in excess of residential cleanup standards (1 and 12 mg/kg, respectively) would be excavated and placed in a staging pile on the site. In the planned industrial use area, soils impacted with PCBs and cadmium in excess of industrial cleanup standards (10 and 450 mg/kg, respectively) would be excavated and placed in a staging pile on the site. Excavated areas would be backfilled with 'clean' fill. Erosion and runoff controls would be implemented to prevent migration of excavated soils away from the staging areas. PCB and cadmium impacted soils would be disposed of in permitted off-site Class I, II or III landfills, depending on the PCB and cadmium concentrations reported in the stockpiled soils and on the classification of these soils for disposal purposes.

The results of shallow soil investigative sampling conducted during the remedial action determined that over half the shallow soil volume of Site IR02 exceeded the cleanup level for either PCBs or cadmium. The average PCB concentration in the remedial action investigative samples was 12.1 mg/kg, and the average cadmium concentration in the remedial action investigative samples was 23.4 mg/kg. The highest PCB concentration reported was 884 mg/kg, and the highest cadmium concentration reported was 377 mg/kg in the remedial action investigative soil samples.

The areal extent and volume of soil to be excavated and removed from Site IR02 was estimated on the basis of the future land use plans for Site IR02. The Catellus Project

Master Plan devotes the western one-third of Site IR02 (approximately 2.5 acres) to residential use and the eastern two-thirds of Site IR02 (approximately 8.1 acres) to industrial use. The Site IR02 RI data had indicated that 70 percent of the soil samples taken from the residential use area within depths of 0 to 1-foot below existing ground surface exceeded the residential cleanup levels of 1 mg/kg for PCBs and 12 mg/kg for cadmium. Likewise, 30 percent of the planned industrial use area soil samples exceeded the industrial cleanup levels of 10 mg/kg for PCBs and 450 mg/kg for cadmium. In remedial planning, on the basis of the RI data and for conservatism, it was assumed that 80 percent of the planned residential use area could exceed residential cleanup levels and that 35 percent of the planned industrial use area could exceed industrial cleanup levels. Remediation cost and volume estimates were derived using these assumptions with the understanding that actual volumes and cost could likely change during remedy implementation. Based on these assumptions, the estimated area of soil remediation was about 5 acres. Confirmation samples would be collected after completion of soil excavation, and prior to backfilling of excavated areas.

4.2 REMEDY IMPLEMENTATION

Remedial soil excavation began on July 5, 2001. Initially, a 6-inch thick layer of soil and other debris were excavated from each area in which the soil cleanup level for PCB or cadmium was exceeded, and confirmation samples were collected from remaining soils in the center and at the edge of the excavated areas. Additional 6-inch thick layers of soil were excavated in and at the edge of each area where the confirmation samples still exceeded one of the cleanup levels, until all confirmation samples no longer exceeded either of the two cleanup levels for PCBs and cadmium. As a result, soils were excavated to depths of as much as 2 feet below existing ground surface in some areas of Site IR02 (Figure 3).

A total of 16,080 tons of soil and debris were found to exceed at least one of the two cleanup levels and were removed from Site IR02 for off-site disposal. Samples of the soil and debris that exceeded the cleanup levels were analyzed using the toxicity characteristic leaching procedure (TCLP) under RCRA to determine if the soil was a RCRA hazardous waste. Samples of the soil that exceeded the cleanup levels were also analyzed using the State of California Waste Extraction Test to determine whether the soil was a California hazardous waste. The waste soil and other debris were then segregated into appropriate stockpiles on the site, and were then shipped to appropriate disposal facilities permitted to accept the wastes.

The removal of PCB and cadmium impacted shallow soils from Site IR02 was completed the week of November 5, 2001. After completing the removal of these soils, Site IR02 was returned to nearly its original grade by the placement of about 14,230 tons of 'clean' backfill soil. The backfilling of excavated areas was completed on November 6, 2001.

The Final Closeout Report for Site IR02, dated December 26, 2001, reports that PCB and cadmium impacted shallow soil remedial excavation activities at Site IR02 have been completed in accordance with the requirements of the Site IR02 RAP/ROD, and that

these soils have been removed from areas identified by the investigative samples as exceeding either one of the two soil cleanup levels for PCBs and cadmium selected for mitigation of Site IR02 shallow soils. All confirmation samples collected and analyzed in accordance with the FSP/QAPP after the final round of soil excavation have reported PCB and cadmium levels below the cleanup levels specified in the RD and the RAP/ROD. Thus, further soil excavation was not deemed to be necessary because the PCB and cadmium cleanup goals as approved in the RAP/ROD had been achieved. No further remedial action was planned to be taken on the shallow soils of the western one third of Site IR02 in reference to PCB and cadmium impacted shallow soils, and this portion of Site IR02 was deemed to be ready for unrestricted residential use with respect to remediation of PCB and cadmium impacted shallow soils The Site IR02 closeout report also states that no further remedial action would be taken on the PCB and cadmium impacted shallow soils of the eastern two-thirds of Site IR02, and that this portion of Site IR02 is deemed to be ready for commercial and industrial use in reference to PCB and cadmium impacted shallow soil remediation, however, this area was restricted from residential use. Therefore, no land use controls (LUC) were deemed necessary for the western one-third of Site IR02 in reference to PCB and cadmium impacted shallow soils, while LUCs were required for the eastern two-thirds of the property for the purposes of restricting this portion of Site IR02 from residential use in reference to PCB and cadmium impacted shallow soils.

No active engineering or construction would be required to implement the land use controls remedy. Roles and responsibilities for implementing and enforcing this remedy will be documented in a Land Use Control Remedial Design (LUC RD) planned to be prepared by the DON in FY 2006. The LUC RD would address the following elements:

- Description of Site IR02.
- A map showing the location and approximate size of Site IR02 and a description of COCs.
- The land-use control objectives and restrictions stated in the RAP/ROD.
- The specific legal mechanism that will be used to achieve these land use control objectives and restrictions.
- The required frequency and nature of periodic inspections of Site IR02 areas restricted from residential use.
- Identification of the entities responsible for implementation of these monitoring and inspections.
- Methods to be used to periodically certify compliance with the land use controls remedy upon completion of inspections, i.e., five-year reviews.
- Procedures for notifying the DON and regulatory oversight agencies in the event of a failure to comply with land use restrictions.

The DTSC has agreed with the successful completion of the PCB and cadmium impacted shallow soil remediation conducted at Site IR02. In its letter dated February 27, 2004 to the

DON, the DTSC acknowledges its receipt and review of the final closeout report dated December 26, 2001 for Site IR02 PCB and cadmium impacted shallow soil remediation. In its letter, the DTSC also states that it concurs that the DON has remediated the PCB and cadmium impacted shallow soils of Site IR02 pursuant to the RAP/ROD for Site IR02 shallow soils, and acknowledges that all confirmation samples collected after final soil excavation show PCB and cadmium concentrations remaining in Site IR02 shallow soils to be below the selected cleanup levels for these two chemical compounds. The DTSC has determined that remediation of PCB and cadmium impacted shallow soils at Site IR02 has been completed, and that no further physical action is necessary to remediate PCB and cadmium in the shallow soils of Site IR02.

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Section 5
PROGRESS SINCE THE LAST FIVE-YEAR REVIEW

This is the first five-year review of the remedies implemented for the PCB and cadmium impacted shallow soils of Site IR02, located at the former FISCA property.

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Section 6
FIVE-YEAR REVIEW PROCESS AND FINDINGS

This section discusses the five-year review process undertaken for the PCB and cadmium impacted shallow soils remediation undertaken at Site IR02, and presents its findings. This five-year review was conducted according to procedures described in DON's May 21, 2004 policy for conducting five-year reviews for DON sites, and in accordance with procedures described in USEPA's June 2001 guidance for conducting five-year reviews.

6.1 FIVE-YEAR REVIEW ADMINISTRATIVE COMPONENTS

The lead agency responsible for this five-year review was the DON. The CDM/Brown and Caldwell Team provided technical and community relations support to the DON.

During April and May 2005 the DON, CDM, and Brown and Caldwell established a team and schedule for the five-year review of PCB and cadmium impacted shallow soils of Site IR02 remedies. The components of this five-year review included:

- Community involvement;
- Review of relevant documents, data, reports, and agreements related to PCB and cadmium impacted Site IR02 shallow soil remediation;
- Review of federal and state applicable or relevant and appropriate requirements (ARARs) cited in the decision documents for PCB and cadmium impacted Site IR02 shallow soil remediation;
- Site IR02 visit and inspection;
- Interviews with staff of the DON, DTSC, Catellus, City of Alameda, and the Restoration Advisory Board (RAB); and,
- Preparation of this five-year review report.

The schedule for overall completion of this first five-year review for the Site IR02 PCB and cadmium impacted shallow soil remediation extends through May 2006.

6.2 COMMUNITY INVOLVEMENT

Community interest in Site IR02 PCB and cadmium impacted shallow soil remediation has been extensive, as can be judged from the many comments received on this subject by the DON from the community during the preparation of the Proposed Plan (PP) and the RAP/ROD for PCB and cadmium impacted shallow soils of Site IR02. At that time the community had expressed concern as to whether the cleanup goals for PCBs and cadmium for Site IR02 shallow soils were indeed protective of human health. A specific concern was expressed by the East Bay Municipal Utility District (EBMUD), the local water utility for the City of Alameda, for the protection of its utility workers who would be installing water service utilities at Site IR02 in the future. The DON responded by confirming that the cleanup levels selected for PCBs and cadmium in shallow soils for the planned residential use portion of Site IR02 would be consistent with planned unrestricted use of this portion, including installation of utilities. Following the public comment period, the DON revised the cleanup level of PCBs to 10 mg/kg for the planned industrial

use portion of Site IR02, based on an exposure model that assumed continuous exposure, 24 hours per day, 7 days per week, 365 days per year; an exposure scenario which was deemed by the DON to be more conservative than the expected lower frequency of exposure by typical utility workers, and more conservative than required by Occupational Safety and Health Association (OSHA).

Another concern expressed by the community involved whether the HHRA for the PCB and cadmium impacted shallow soils of Site IR02 included ingestion of produce grown in the planned residential use portion of Site IR02, and whether there would be land use controls which would prohibit this activity. The DON responded that growing produce in the planned residential use portion of Site IR02 was included in the human health risk assessments, and that since the cleanup levels selected for PCB and cadmium impacted shallow soils of this portion of Site IR02 would allow for unrestricted use of the property, no prohibitions on ingestion of produce grown on this property would be necessary. However, land use restrictions would be placed on the eastern industrial use portion of Site IR02.

A major goal of the DON's community relations program during the course of investigations and remediation it has conducted for the PCB and cadmium impacted shallow soils of Site IR02 has been to keep the local community in Alameda informed of its activities. To that affect, it has met regularly with the RAB and the Base Closure Team (BCT) and provided them with the progress being made on the project. In April 2001 the DON issued its PP describing its preferred remedy for the PCB and cadmium impacted shallow soils of Site IR02.

The DON will place public notices in the local Alameda newspapers announcing the preparation of this five-year review of remedies implemented for PCB and cadmium impacted shallow soils of Site IR02. The DON will also prepare a fact sheet on this five-year review.

6.3 DOCUMENT AND DATA REVIEW

As part of this five-year review, Brown and Caldwell conducted reviews of numerous documents related to PCB and cadmium impacted shallow soil remediation activities completed at Site IR02. These reviews focused primarily on documents which provided an insight into the technical and regulatory analyses and considerations that led to the remedies selected for the PCB and cadmium impacted shallow soils of Site IR02, and insight into the implementation of these remedies. These documents contained site-specific data which were also reviewed as part of this task.

The RI and FS reports, as well as the RAP/ROD and the Closeout Report for Site IR02 provided data and information on the shallow soil COCs at Site IR02 (PCBs and cadmium) and human health and ecological risk assessments conducted for the PCB and cadmium impacted shallow soils of Site IR02, provided descriptions of pre-remedial-action soil removal events and identified the RAOs as well as the ARARs for the PCB and cadmium impacted shallow soils of Site IR02, described the selection process of

the final remedy and the basis for that selection, implementation of the remedy, and post-remedy-implementation confirmations.

Numerous agreements made between the DON and the City of Alameda as well as the DTSC provided information on the regulatory oversight provided for the PCB and cadmium impacted shallow soils of Site IR02, as well as an understanding of the land use restrictions placed on the planned industrial use portion of Site IR02 with respect to the PCBs and cadmium reported in the shallow soils of Site IR02. These agreements include the Quitclaim Deed between the DON and the City of Alameda, and the covenants between the City of Alameda and DTSC and between the DON and DTSC.

Collectively, these documents and some others (in combination with personal interviews) provided information to this five-year review which allowed developing a chronology of site events, and an understanding of the involvement of the regulators and the community in the remedial action selection and implementation process for the PCB and cadmium impacted shallow soils of Site IR02.

Attachment A provides a listing of relevant Site IR02 related documents included in this five-year review. Data review is discussed in Section 7 of this five-year review report.

6.4 SITE VISIT AND INSPECTION

Representatives of the DON, Brown and Caldwell, and Catellus physically and visually inspected Site IR02 on May 10, 2005. Conditions during the site visit were favorable, with clear weather and no precipitation. The entire Site IR02 was accessible to the site inspection team.

The purpose of this site inspection was to assess the protectiveness of the remedies implemented for the PCB and cadmium impacted shallow soils at Site IR02, including confirming the presence of fencing to restrict access, and to discuss land use controls implemented for the planned industrial use portion of Site IR02 with respect to PCB and cadmium impacted shallow soils.

No significant issues have been identified at any time following the completion of the PCB and cadmium impacted shallow soil remedial actions implemented at Site IR02 and none were identified at the time of this site inspection. Construction activities by the redevelopment contractor Catellus were well underway within the site. Visual examination of Site IR02 revealed that its surface was essentially level and graded to elevations generally matching those of the adjacent properties. There were no discernible signs of soil erosion due to forces such as vehicular (construction) traffic, wind, or surface flow caused by rainfall. Site IR02 appeared to be well secured by fencing surrounding it. Vehicular and pedestrian access into Site IR02 was further restricted by Catellus as part of its site control during its ongoing construction activities. Residential or commercial structures had not yet been constructed on Site IR02 at the time of this site visit and inspection. A storm-water pumping station, located approximately on the boundary between the residential use and industrial use portions of the site, was in its final stages of construction. Attachment B contains the site inspection form providing

findings of the Site IR02 inspection conducted on May 10, 2005. Attachment C contains photographs of Site IR02 taken during the site inspection of May 10, 2005.

6.5 INTERVIEWS

Interviews were conducted with individuals representing various entities connected to the remedial actions implemented for PCB and cadmium impacted shallow soils at Site IR02, as listed below.

- Mr. Thomas Macchiarella, Alameda BRAC Environmental Coordinator, BRAC Program Management Office West, Department of the Navy
- Mr. Lou Ocampo, P.E., Remedial Project Manager, BRAC Program Management Office West, Department of the Navy
- Mr. Doug DeLong, Environmental Compliance Manager, BRAC Program Management Office West, Department of the Navy
- Mr. Henry Wong, Remedial Project Manager, California Environmental Protection Agency, Department of Toxic Substances Control
- Mr. Philip Owen, Director of Construction, CATELLUS Commercial Development Corporation
- Ms. Debbie Potter, Base Reuse & Redevelopment Manager, City of Alameda
- Peter Russell, Ph.D., P.E., Principal, Russell Resources, Inc., Consultant to the City of Alameda
- Mr. Gregory McFann, Chief, Planning and Building Department, City of Alameda
- Mr. Ken Hansen, Community Co-Chair, Alameda Annex Restoration Advisory Board

An interview documentation form listing the name, title, and organization of each interviewee, along with the date and location where each interview took place, is provided in Attachment D. Individual interview records documenting each interview are contained in Attachment E.

No significant problems or concerns regarding remediation of PCB and cadmium impacted shallow soils at Site IR02 were identified during the interviews. There had not been any emergency responses in connection with the PCB and cadmium impacted shallow soil remedies implemented at Site IR02.

Section 7
TECHNICAL ASSESSMENT

This section provides an assessment of the performance and effectiveness of the remedial actions implemented for PCB and cadmium impacted shallow soils at Site IR02 in satisfying the RAP/ROD requirements for protection of human health and the environment. This assessment is based on document and data review, site inspection, interviews, and evaluations provided further below.

Technical assessment components of this five-year review focuses on responses to the following three key questions:

Question A: Is the remedy functioning as intended by the decision documents?

Question B: Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of remedy selection still valid?

Question C: Has any other information come to light that could call into question the protectiveness of the remedy?

Responses to these questions are provided below.

7.1 QUESTION A: IS THE REMEDY FUNCTIONING AS INTENDED BY THE DECISION DOCUMENTS?

Yes. The review of documents and data, site inspection, and interviews indicate that the remedies implemented for PCB and cadmium impacted shallow soils at Site IR02 are functioning as intended by the decision documents (RAP/ROD). The removal of soils with PCB and cadmium concentrations exceeding cleanup levels for the planned residential use area (western one-third of Site IR02) and exceeding cleanup levels for the planned industrial use area (eastern two-thirds of Site IR02) have been completed, thus achieving the RAOs for preventing direct contact with, or ingestion of, PCB and cadmium impacted shallow soils of Site IR02 exceeding cleanup levels.

Land use controls are in place that prohibit residential use of the eastern two-thirds of Site IR02 with respect to PCB and cadmium impacted shallow soils. There are no land use controls on the western one-third of Site IR02 for unlimited residential use of this area with respect to the remediated PCB and cadmium impacted shallow soils.

Fencing around Site IR02 was observed to be intact and in good repair, and an extensive construction activity for redevelopment was observed to be underway at Site IR02 at the time of the site inspection conducted on May 10, 2005. Access into Site IR02 by unauthorized persons was prohibited. Those entering the site were required to wear hard hat and reflective vest as part of the construction site safety rules. The Site IR02 redevelopment contractor Catellus Development Corporation's Site Management Plan (SMP) for Site IR02 redevelopment activities was in place and guided the daily and long term activities of the project. Catellus is on site and it is knowledgeable of the Site IR02's past and the requirements of its SMP.

7.2 QUESTION B: ARE THE EXPOSURE ASSUMPTIONS, TOXICITY DATA, CLEANUP LEVELS, AND REMEDIAL ACTION OBJECTIVES USED AT THE TIME OF REMEDY SELECTION STILL VALID?

Yes. The assumptions made at the time of remedy selection are generally unchanged. The remediation of PCB and cadmium impacted shallow soils of Site IR02 has been completed as intended by the decision documents. There have been no discernible changes in the post-remedy physical condition of shallow soils at Site IR02 that would affect the protectiveness of the remedies implemented with respect to PCB and cadmium impacted shallow soils at this site. The future land use expectations at and near Site IR02 have not changed. No newly identified contaminants or contaminant sources that would impact the remediated PCB and cadmium impacted shallow soils of Site IR02 have been identified or reported. As part of the response to this question, the ARARs, and the assumptions concerning PCB and cadmium exposure and toxicity data, were evaluated, as discussed below.

Changes in ARARs

The ARARs identified in the Site IR02 RAP/ROD were reviewed, as listed in Attachment F. The listing includes the citation for the ARAR, a brief description of the regulated parameter, the reference for the latest regulation reviewed, and a brief conclusion as to whether any updates to the regulation were identified that could potentially affect the protection of human health and the environment.

No changes to the ARARs evaluated in the Site IR02 RAP/ROD were identified that could potentially affect the protectiveness of the PCB and cadmium impacted shallow soil remedial actions implemented at Site IR02 for protection of human health and the environment. In addition, no new ARARs were identified. However, the DTSC has recently adopted regulations for the purpose of establishing a standard for implementation of land use controls remedies where chemicals of concern remain at a site in concentrations not suitable for unrestricted use of that site. Effective April 19, 2003, the DTSC has added Section 67391.1, Land Use Covenants Regulations, to Title 22, Division 4.5, Chapter 39 of California Code of Regulations (CCR), as provided in Attachment F.

Although it does not appear that these post-RAP/ROD regulations include any 'new' substantive requirements that are necessary to protect human health and the environment and that were not already covered by the underlying statutory ARARs identified and described in the Site IR02 RAP/ROD, the DON has agreed to accept substantive provisions of these regulations as "relevant and appropriate" state ARARs.

Changes in Exposure Pathways, Toxicity, and Cleanup Levels

The HHRA conducted for the PCB and cadmium impacted shallow soils of Site IR02 was reviewed, as discussed in Attachment G. The HHRA has been conducted using the DTSC's exposure assumptions which are still current. The only value that has changed since then is the residential adult exposure frequency for dermal contact with soil; this change would not impact the residential cleanup level as it was calculated for a child.

7.3 QUESTION C: HAS ANY OTHER INFORMATION COME TO LIGHT THAT COULD CALL INTO QUESTION THE PROTECTIVENESS OF THE REMEDY?

No. This five-year review did not discover information that would call into question the protectiveness of the PCB and cadmium impacted shallow soil remedies that have been implemented at Site IR02. Ecological receptors were not identified at Site IR02 in the baseline risk assessment; none were identified in this five-year review, and none were discernible during the site inspection. The PCB and cadmium impacted shallow soils of Site IR02 exceeding cleanup levels have been removed from Site IR02, as confirmed by post-remedy confirmation soil sampling and analyses, and the excavated areas have been backfilled with soils having acceptable environmental properties.

7.4 TECHNICAL ASSESSMENT SUMMARY

Based on the findings of this five-year review, the PCB and cadmium impacted shallow soil remedies selected for Site IR02 have been implemented as intended by the decision documents, and the completed remedies continue to meet the RAOs, and provide the means for adequately protecting the human health and the environment at Site IR02 in reference to PCB and cadmium impacted shallow soils of Site IR02.

Physical changes to Site IR02, other than those resulting from redevelopment of the site in accordance with the decision documents, were not discovered. No changes to the ARARs identified for PCB and cadmium impacted shallow soils of Site IR02 were identified that could potentially affect the protectiveness of the shallow soil remedial actions implemented for human health and the environment. In addition, no new ARARs were identified. The human health risk assessment for PCB and cadmium impacted shallow soils of Site IR02 has been conducted using the DTSC's exposure assumptions. The only value that has changed since then is the residential adult exposure frequency for dermal contact with soil. However, this change would not impact the residential cleanup level as it was calculated for a child. As such, there have not been changes to the standardized risk assessment methodology that would affect the protectiveness of the PCB and cadmium impacted shallow soil remedies implemented at Site IR02.

This five-year review did not discover information that would call into question the protectiveness of the PCB and cadmium impacted shallow soil remedies that have been implemented at Site IR02.

Although the decision document (RAP/ROD) for PCB and cadmium impacted shallow soils of Site IR02 did not require a Land Use Control Implementation and Certification Plan (LUCICP) the DON has generally agreed with environmental regulators that land use controls remedies depend heavily upon long-term follow through, oversight, and enforcement to ensure their reliability and effectiveness. As such, the DON plans to accomplish oversight and long-term monitoring of the land use controls remedy for the industrial use portion of Site IR02 through the preparation of a Land Use Control Remedial Design (LUC RD) for Site IR02 in FY 2006. The LUC RD will develop

protocols for the enforcement and monitoring of land use restrictions implemented at the eastern, planned industrial use portion of Site IR02 with respect to PCB and cadmium impacted shallow soils of Site IR02.

Section 8
ISSUES, CONCLUSIONS, RECOMMENDATIONS

This five-year review did not discover new issues relative to the performance of the PCB and cadmium impacted shallow soil remedies implemented at Site IR02. Shallow soils with PCBs and cadmium exceeding cleanup levels identified separately for the planned residential use and planned industrial use portions of Site IR02 have been excavated, and removed from Site IR02. Land use controls and environmental covenants are in effect that separate the residential and industrial use portions of Site IR02 and that restricts the industrial use portion to only industrial use and not for residential use in reference to PCB and cadmium impacted shallow soils of Site IR02 currently under development in accordance with decision documents and under the oversight of regulatory agencies. Site conditions that could result in having potential adverse effects on the future protectiveness of the remedy were not observed.

Based on the findings of this five-year review, the PCB and cadmium impacted shallow soil remedies for Site IR02 have been implemented as intended by the decision documents, and the completed remedies continue to meet the remedial action objectives, and provide the means for adequately protecting human health and the environment at Site IR02 in reference to PCB and cadmium impacted shallow site soils. The DON intends to prepare a LUC RD for Site IR02 in FY 2006, which will develop protocols for the enforcement and monitoring of land use restrictions implemented at the eastern, planned industrial use portion of Site IR02 with respect to PCB and cadmium impacted shallow soils of Site IR02.

The PCB and cadmium impacted shallow soil remedies implemented at Site IR02 currently provide the protectiveness of human health and the environment intended by the decision documents. Concentrations of PCBs and cadmium in shallow soils of Site IR02 have been reduced to levels acceptable separately for the two land use scenarios identified for Site IR02, suitably addressing the threats to human health and the environment at Site IR02 through removal of unsuitable PCB and cadmium impacted shallow soils to regulated off-site disposal facilities. Land use controls in effect clearly delineate the planned residential and industrial use portions of Site IR02 with respect to PCB and cadmium impacted shallow soils of Site IR02. The Catellus Development Corporation's SMP in use at Site IR02 provides guidelines for conducting the redevelopment of Site IR02 in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment. Technical or physical issues related to remedies implemented for PCB and cadmium impacted shallow soils of Site IR02 that would be likely to reverse the current conditions were not discovered in this five-year review.

On the basis of the findings of this five-year review, conducting further five-year reviews for the remediated PCB and cadmium impacted shallow soils of the planned residential use portion of Site IR02 was not found to be warranted.

Land use controls have been put into effect for the eastern two-thirds portion of Site IR02 which is currently being developed under an industrial use scenario. This portion of Site IR02 has not been accepted by the regulatory oversight agencies as being suitable for unrestricted exposure and unlimited use, without restrictions, with respect to PCB and cadmium impacted shallow soils.

The Quitclaim Deed entered into between the DON and the City of Alameda, and the Interim Covenant to Restrict Use that prohibit residential use of the eastern two-thirds of Site IR02 with

respect to PCB and cadmium impacted shallow soils, entered into between the DON and DTSC (Attachment H), were reviewed and determined to be properly executed and recorded. These documents are deemed to be in full force and effect and to be "in place." Activities that would have violated these land use controls were not observed under this five-year review. An interview with DTSC, and a visit to and interview at Alameda City Hall confirmed that these land use controls are currently in effect.

The DTSC, in its letter to the DON dated February 27, 2004 (Attachment H) states that remediation of PCB and cadmium impacted shallow soils of Site IR02 has been completed, and that no further physical action is necessary to remediate PCB and cadmium in the soils of Site IR02.

Section 9
PROTECTIVENESS STATEMENT

The PCB and cadmium impacted shallow soil remedies implemented at Site IR02 currently provide the protectiveness of human health and the environment intended by the decision documents. Concentrations of PCBs and cadmium in shallow soils of Site IR02 have been reduced to acceptable levels, suitably addressing the threats to human health and the environment at Site IR02 through removal of unsuitable PCB and cadmium impacted shallow soils to regulated off-site disposal facilities. Land use controls in effect clearly delineate the residential and industrial use portions of Site IR02 with respect to PCB and cadmium impacted shallow soils of Site IR02. The Catellus Development Corporation's SMP provides guidelines for its redevelopment of Site IR02 in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment. Technical or physical issues related to the remedies implemented for PCB and cadmium impacted shallow soils of Site IR02 that would be likely to reverse the current conditions were not discovered in this five-year review.

A LUC RD, planned to be prepared by the DON for Site IR02 in FY 2006, will develop protocols for the enforcement and monitoring of land use restrictions implemented at the eastern, planned industrial use portion of Site IR02 with respect to PCB and cadmium impacted shallow soils of Site IR02.

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Section 10
NEXT FIVE-YEAR REVIEW

Land use controls are currently in effect for the eastern two-thirds of Site IR02 planned for industrial use in reference to PCB and cadmium impacted shallow soils of Site IR02. As such, there needs to be a review of the protectiveness of this remedy within the next five years, or before June 2011.

The next five-year review of this land use controls remedy should include reviews of ARARs and risk assessments with respect to PCBs and cadmium remaining in the shallow soils of the planned industrial use portion of Site IR02 to assess whether changes to the ARARs or cleanup levels may have occurred during the five years from the five-year review presented herein, as well as reviews of redevelopment and land use history of the industrial use portion of Site IR02 over the next five years. Site inspection and interviews should focus on whether there have been violations of the land use controls and restrictions currently in effect for the industrial use portion of Site IR02 with respect to PCB and cadmium impacted shallow soils of Site IR02 and under the protocols to be established in the LUC RD planned to be prepared by the DON for Site IR02 in FY 2006.

In the event the industrial use portion of Site IR02 is considered at a future time to be converted to residential use, then, in accordance with the environmental covenants and land use controls currently in effect for the PCB and cadmium impacted shallow soils of Site IR02, additional soil investigations and remediation could be necessary. As such, the next five-year review of the land use controls remedy implemented for the planned industrial use portion of Site IR02 should also include reviews of any such remedial actions, in addition to site inspection and interviews focused on the remedy implementation and whether this portion of Site IR02 has become acceptable to the regulatory oversight agencies as being suitable for unrestricted exposure and unlimited use with respect to PCB and cadmium impacted shallow soils.

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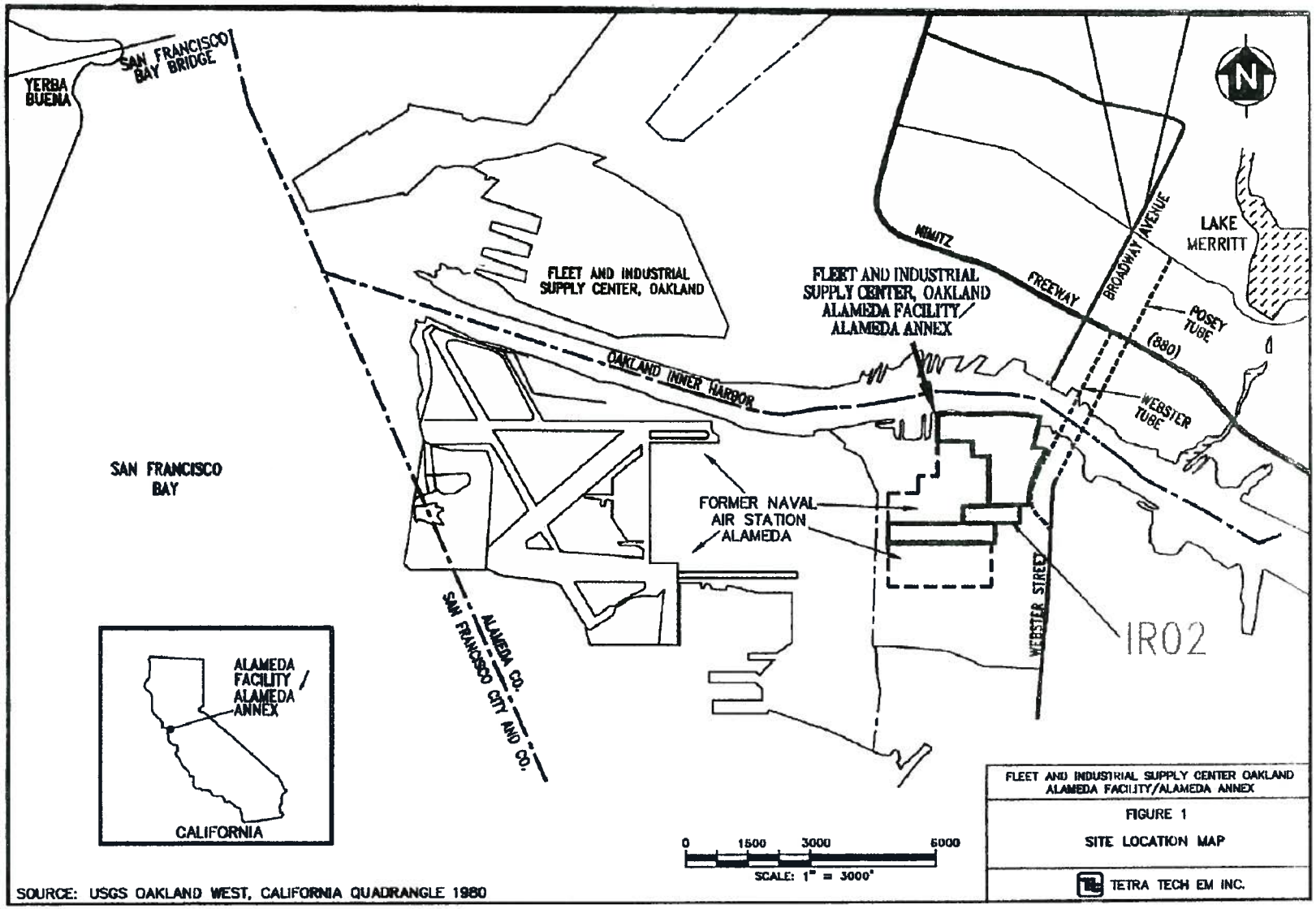
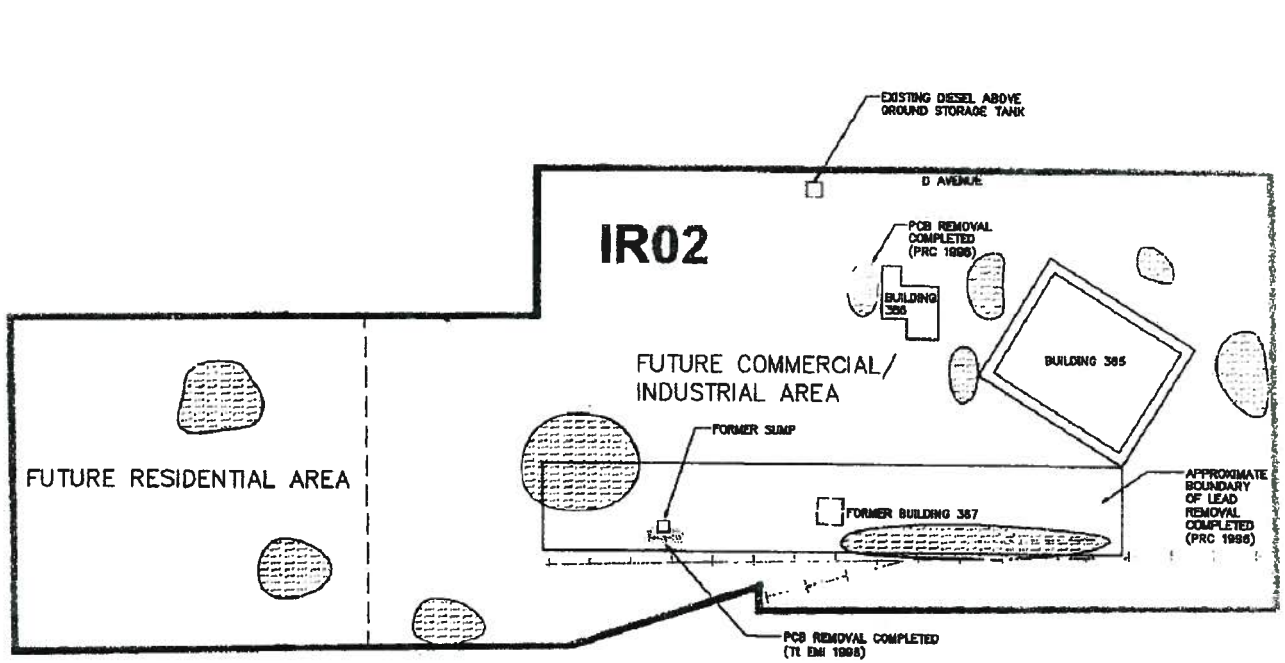
FIGURES



Excerpted from Site IR02 Record of Decision dated June 25, 2001

DATE	PROJECT NUMBER	
MARCH 2006	128268	**STATUTORY FIVE-YEAR REVIEW** **PART I - SITE IR02**
BROWN AND CALDWELL SAN DIEGO, CALIFORNIA	PROJECT LOCATION: FORMER FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX (FISCA) ALAMEDA, CALIFORNIA	FIGURE—1 **PART I**



LEGEND

- PCB or Lead Removal Completed
- PCB — Polychlorinated Biphenyl
- Areas of Contamination
- Railroad Tracks
- IR02 — Screening Lot and Scrapyard Area

75' 0 75' 150'
SCALE: 1" = 150'

FISCO ALAMEDA FACILITY / ALAMEDA ANNEX
ALAMEDA, CALIFORNIA

FIGURE 2
AREAS OF CONTAMINATION WITH EXCEEDANCES OF PCB AND CADMIUM CLEANUP LEVELS

TETRA TECH EM INC.

Excerpted from Site IR02 Record of Decision dated June 25, 2001

DATE	PROJECT NUMBER
MARCH 2006	128268

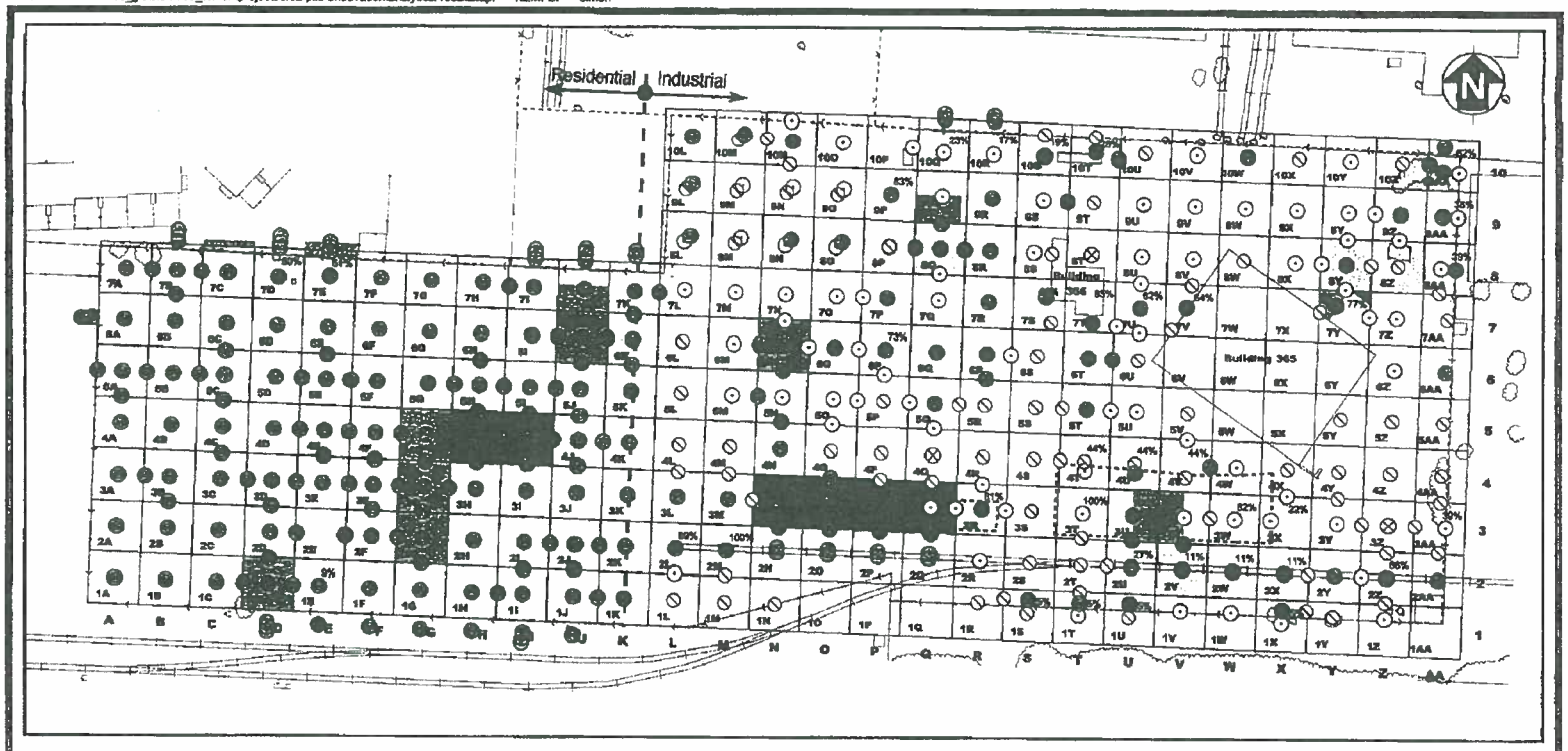
BROWN AND CALDWELL
SAN DIEGO, CALIFORNIA

STATUTORY FIVE-YEAR REVIEW
PART I - SITE IR 02

PROJECT LOCATION: FORMER FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX (FISCA)
ALAMEDA, CALIFORNIA

FIGURE-2
PART I

12-13-2001 v:\misc_gis\alameda_annex\projects\ir02 pcb excavation\analytical results.apr TIEMI-SF simon



EXCAVATION DEPTH KEY:

Surface Sample [FIGURE 2 — 0.0
0.5 Foot Sample [FIGURE 3 — 0.5
1.0 Foot Sample — 1.0
1.5 Foot Sample — 1.5
2.0 Foot Sample [FIGURE 5 (inset) — 2.0
2.5

Depth (feet below ground surface)

GRID CELL:
65% — Percent of grid square obstructed to excavation
3Q — Grid cell number

------ OUTLINE OF REMOVED CONCRETE PADS
--x--- FENCE
-- FORMER SITE FEATURE

SYMBOL DEFINITIONS:

TOTAL PCBs IN SOIL	CADMIUM IN SOIL: Less Than 12 mg/kg	12 mg/kg to 50 mg/kg	Greater Than 50 mg/kg
Less Than 1 mg/kg	●	●	●
1 mg/kg to 10 mg/kg	⊙	⊘	⊗
10 mg/kg to 50 mg/kg	●	●	●
Greater Than 50 mg/kg	●	●	●

NOTES:
12 mg/kg is the residential cleanup level for cadmium.
450 mg/kg is the industrial cleanup level for cadmium.
1 mg/kg is the residential cleanup level for PCBs.
10 mg/kg is the industrial cleanup level for PCBs.

70 0 70 140 Feet

CLOSEOUT REPORT
REMOVAL OF CONTAMINATED SOIL AT IR02
FISCO ALAMEDA FACILITY / ALAMEDA ANNEX
ALAMEDA, CALIFORNIA

FIGURE 8

FINAL CONFIRMATION SAMPLE RESULTS AND EXCAVATION DEPTHS

Tetra Tech EM Inc.

DS 0289 17216

DATE	PROJECT NUMBER
MARCH 2006	128268

BROWN AND CALDWELL
SAN DIEGO, CALIFORNIA

STATUTORY FIVE-YEAR REVIEW
PART I - SITE IR 02
(ADAPTED FROM FINAL CLOSEOUT REPORT DATED DECEMBER 26, 2001)

PROJECT LOCATION: FORMER FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX (FISCA)
ALAMEDA, CALIFORNIA

FIGURE-3
PART I

ATTACHMENT A

LISTING OF SITE IR02 RELATED DOCUMENTS INCLUDED IN THIS FIRST FIVE-YEAR REVIEW

ATTACHMENT A

LISTING OF SITE IR02 RELATED DOCUMENTS INCLUDED IN THIS FIRST FIVE-YEAR REVIEW

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ATTACHMENT B

SITE INSPECTION FORM

FIRST FIVE-YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

ATTACHMENT B

SITE INSPECTION FORM

FIRST FIVE-YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION - SITE IR02

I. SITE INFORMATION	
Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**Date of Inspection:** May 10, 2005
Location and Region: Alameda Facility/Alameda Annex, California	**EPA ID:** 2170023236
Agency, office, or company leading the five-year review: Department of the Navy	**Weather/temperature:** Clear, dry, mid-70's

Remedy Includes: (Check all that apply)

- ☐ Landfill cover/containment
- ☐ Access controls
- ■ Institutional controls
- ☐ Groundwater pump and treatment
- ☐ Surface water collection and treatment
- ■ Other – Shallow soil removal
- ☐ Monitored natural attenuation
- ☐ Groundwater containment
- ☐ Vertical barrier walls

Attachments: ☐ Inspection team roster attached ■ Site map attached – see Figures 1 and 2 in the report

II. INTERVIEWS (Check all that apply)

1. **O&M site manager** N/A _____ _____ _____
   Name Title Date

   Interviewed ☐ at site ☐ at office ☐ by phone Phone no. _____

   Problems, suggestions; ☐ Report attached _____

2. **O&M staff** N/A _____ _____ _____
   Name Title Date

   Interviewed ☐ at site ☐ at office ☐ by phone Phone no. _____

   Problems, suggestions; ☐ Report attached _____

N/A – not applicable

10. **Local regulatory authorities and response agencies** (i.e., State and Tribal offices, emergency response office, police department, office of public health or environmental health, zoning office, recorder of deeds, or other city and county offices, etc.) Fill in all that apply.

Agency DTSC
Contact Mr. Henry Wong | Remedial Project Manager | May 11, 2005 | 510.540.3770
Name | Title | Date | Phone no.
Problems; suggestions; ■ Report attached – See Attachment E of this 5-year review report

Agency City of Alameda
Contact Ms. Debbie Potter | Base Reuse& Redevelopment Manager | May 12, 2005 | 510.749.5833
Name | Title | Date | Phone no.
Problems; suggestions; ■ Report attached – See Attachment E of this 5-year review report

Agency City of Alameda
Contact Mr. Gregory McFann | Chief, Planning and Building Dept. | May 12, 2005 | 510.747.6820
Name | Title | Date | Phone no.
Problems; suggestions; ■ Report attached - See Attachment E of this 5-year review report

Agency _____
Contact _____ | _____ | _____ | _____
Name | Title | Date | Phone no.
Problems; suggestions; ☐ Report attached _____

4. **Other interviews** (optional) ■ Report attached - See Attachment E of this 5-year review report
Mr. Thomas Macchiarella, Alameda BRAC Environmental Coordinator
Mr. Lou Ocampo, PE, RPM
Mr. Doug DeLong, Environmental Compliance Manager
Mr. Philip Owen, Catellus Director of Construction
Mr. Ken Hansen, RAB Community Co-Chair
Peter Russell, PhD., PE, Consultant to the City of Alameda

III. ON-SITE DOCUMENTS & RECORDS VERIFIED (Check all that apply)

1. **O&M Documents**
   - ☐ O&M manual ☐ Readily available ☐ Up to date ☐ N/A
   - ☐ As-built drawings ☐ Readily available ☐ Up to date ☐ N/A
   - ☐ Maintenance logs ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

2. **Site-Specific Health and Safety Plan** ☐ Readily available ☐ Up to date ☐ N/A
   - ☐ Contingency plan/emergency response plan ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

3. **O&M and OSHA Training Records** ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

4. **Permits and Service Agreements**
   - ☐ Air discharge permit ☐ Readily available ☐ Up to date ☐ N/A
   - ☐ Effluent discharge ☐ Readily available ☐ Up to date ☐ N/A
   - ☐ Waste disposal, POTW ☐ Readily available ☐ Up to date ☐ N/A
   - ☐ Other permits ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

5. **Gas Generation Records** ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

6. **Settlement Monument Records** ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

7. **Groundwater Monitoring Records** ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

8. **Leachate Extraction Records** ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

9. **Discharge Compliance Records**
   - ☐ Air ☐ Readily available ☐ Up to date ☐ N/A
   - ☐ Water (effluent) ☐ Readily available ☐ Up to date ☐ N/A

   Remarks N/A

10. **Daily Access/Security Logs** ☐ Readily available ☐ Up to date ☐ N/A

    Remarks N/A

N/A not applicable

IV. O&M COSTS - Not Applicable

1. **O&M Organization**
   ☐ State in-house ☐ Contractor for State
   ☐ PRP in-house ☐ Contractor for PRP
   ☐ Federal Facility in-house ☐ Contractor for Federal Facility
   ☐ Other_____

2. **O&M Cost Records**
   ☐ Readily available ☐ Up to date
   ☐ Funding mechanism/agreement in place
   Original O&M cost estimate_____ ☐ Breakdown attached

   Total annual cost by year for review period if available

   From_____ To_____ _____ ☐ Breakdown attached
   Date Date Total cost
   From_____ To_____ _____ ☐ Breakdown attached
   Date Date Total cost
   From_____ To_____ _____ ☐ Breakdown attached
   Date Date Total cost
   From_____ To_____ _____ ☐ Breakdown attached
   Date Date Total cost
   From_____ To_____ _____ ☐ Breakdown attached
   Date Date Total cost

3. **Unanticipated or Unusually High O&M Costs During Review Period**
   Describe costs and reasons: _____

V. ACCESS AND INSTITUTIONAL CONTROLS ■ Applicable ☐ N/A

A. Fencing

1. **Fencing damaged** ☐ Location shown on site map ■ Gates secured ☐ N/A
   Remarks Fencing in good shape, Catellus Construction controls access to site.

B. Other Access Restrictions

1. **Signs and other security measures** ☐ Location shown on site map ☐ N/A
   Remarks Catellus Construction controls access to site

C. Institutional Controls (ICs)

1. **Implementation and enforcement**

Site conditions imply ICs not properly implemented ☐ Yes ■ No ☐ N/A
Site conditions imply ICs not being fully enforced ☐ Yes ■ No ☐ N/A

Type of monitoring (*e.g.*, self-reporting, drive by) Catellus Construction controls access to site
Frequency - Daily
Responsible party/agency - Catellus Construction
Contact Mr. Philip Owen, Director of Construction 510.337.8735

Reporting is up-to-date ■ Yes ☐ No ☐ N/A
Reports are verified by the lead agency ■ Yes ☐ No ☐ N/A

Specific requirements in deed or decision documents have been met ■ Yes ☐ No ☐ N/A
Violations have been reported ☐ Yes ■ No ☐ N/A
Other problems or suggestions: ☐ Report attached

2. **Adequacy** ■ ICs are adequate ☐ ICs are inadequate ☐ N/A
Remarks

D. General

1. **Vandalism/trespassing** ☐ Location shown on site map ■ No vandalism evident
Remarks

2. **Land use changes on site** ■ N/A
Remarks

3. **Land use changes off site** ■ N/A
Remarks

VI. GENERAL SITE CONDITIONS

A. Roads ■ Applicable ☐ N/A

1. **Roads damaged** ☐ Location shown on site map ■ Roads adequate ☐ N/A
Remarks

B. Other Site Conditions

Remarks _____

VII. LANDFILL COVERS ☐ Applicable ■ N/A

A. Landfill Surface

1. **Settlement** (Low spots) ☐ Location shown on site map ☐ Settlement not evident
Areal extent_____ Depth_____
Remarks_____

2. **Cracks** ☐ Location shown on site map ☐ Cracking not evident
Lengths_____ Widths_____ Depths_____
Remarks_____

3. **Erosion** ☐ Location shown on site map ☐ Erosion not evident
Areal extent_____ Depth_____
Remarks_____

4. **Holes** ☐ Location shown on site map ☐ Holes not evident
Areal extent_____ Depth_____
Remarks_____

5. **Vegetative Cover** ☐ Grass ☐ Cover properly established ☐ No signs of stress
☐ Trees/Shrubs (indicate size and locations on a diagram)
Remarks_____

6. **Alternative Cover (armored rock, concrete, etc.)** ☐ N/A
Remarks_____

7. **Bulges** ☐ Location shown on site map ☐ Bulges not evident
Areal extent_____ Height_____
Remarks_____

8. **Wet Areas/Water Damage** ☐ Wet areas/water damage not evident
☐ Wet areas ☐ Location shown on site map Areal extent_____
☐ Ponding ☐ Location shown on site map Areal extent_____
☐ Seeps ☐ Location shown on site map Areal extent_____
☐ Soft subgrade ☐ Location shown on site map Areal extent_____
Remarks_____

9.	**Slope Instability** ☐ Slides ☐ Location shown on site map ☐ No evidence of slope instability Areal extent_____ Remarks_____		
B. Benches ☐ Applicable ☐ N/A (Horizontally constructed mounds of earth placed across a steep landfill side slope to interrupt the slope in order to slow down the velocity of surface runoff and intercept and convey the runoff to a lined channel.)			
1.	**Flows Bypass Bench** ☐ Location shown on site map ☐ N/A or okay Remarks_____		
2.	**Bench Breached** ☐ Location shown on site map ☐ N/A or okay Remarks_____		
3.	**Bench Overtopped** ☐ Location shown on site map ☐ N/A or okay Remarks_____		
C. Letdown Channels ☐ Applicable ☐ N/A (Channel lined with erosion control mats, riprap, grout bags, or gabions that descend down the steep side slope of the cover and will allow the runoff water collected by the benches to move off of the landfill cover without creating erosion gullies.)			
1.	**Settlement** ☐ Location shown on site map ☐ No evidence of settlement Areal extent_____ Depth_____ Remarks_____		
2.	**Material Degradation** ☐ Location shown on site map ☐ No evidence of degradation Material type_____ Areal extent_____ Remarks_____		
3.	**Erosion** ☐ Location shown on site map ☐ No evidence of erosion Areal extent_____ Depth_____ Remarks_____		

4. **Undercutting** ☐ Location shown on site map ☐ No evidence of undercutting
Areal extent_____ Depth_____
Remarks_____

5. **Obstructions** Type_____ ☐ No obstructions
☐ Location shown on site map Areal extent_____
Size_____
Remarks_____

6. **Excessive Vegetative Growth** Type_____
☐ No evidence of excessive growth
☐ Vegetation in channels does not obstruct flow
☐ Location shown on site map Areal extent_____
Remarks_____

D. Cover Penetrations ☐ Applicable ☐ N/A

1. **Gas Vents** ☐ Active ☐ Passive
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance
☐ N/A
Remarks_____

2. **Gas Monitoring Probes**
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance ☐ N/A
Remarks_____

3. **Monitoring Wells** (within surface area of landfill)
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance ☐ N/A
Remarks_____

4. **Leachate Extraction Wells**
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance ☐ N/A
Remarks_____

5. **Settlement Monuments** ☐ Located ☐ Routinely surveyed ☐ N/A
Remarks_____

E. Gas Collection and Treatment	☐ Applicable	☐ N/A	
1.	**Gas Treatment Facilities** ☐ Flaring ☐ Thermal destruction ☐ Collection for reuse ☐ Good condition ☐ Needs Maintenance Remarks_____		
2.	**Gas Collection Wells, Manifolds and Piping** ☐ Good condition ☐ Needs Maintenance Remarks_____		
3.	**Gas Monitoring Facilities** (*e.g.*, gas monitoring of adjacent homes or buildings) ☐ Good condition ☐ Needs Maintenance ☐ N/A Remarks_____		
F. Cover Drainage Layer	☐ Applicable	☐ N/A	
1.	**Outlet Pipes Inspected** ☐ Functioning ☐ N/A Remarks_____		
2.	**Outlet Rock Inspected** ☐ Functioning ☐ N/A Remarks_____		
G. Detention/Sedimentation Ponds	☐ Applicable	☐ N/A	
1.	**Siltation** Areal extent_____ Depth_____ ☐ N/A ☐ Siltation not evident Remarks_____		
2.	**Erosion** Areal extent_____ Depth_____ ☐ Erosion not evident Remarks_____		
3.	**Outlet Works** ☐ Functioning ☐ N/A Remarks_____		
4.	**Dam** ☐ Functioning ☐ N/A Remarks_____		

H. Retaining Walls ☐ Applicable ☐ N/A

1. **Deformations** ☐ Location shown on site map ☐ Deformation not evident
   Horizontal displacement_____ Vertical displacement_____
   Rotational displacement_____
   Remarks_____

2. **Degradation** ☐ Location shown on site map ☐ Degradation not evident
   Remarks_____

I. Perimeter Ditches/Off-Site Discharge ☐ Applicable ☐ N/A

1. **Siltation** ☐ Location shown on site map ☐ Siltation not evident
   Areal extent_____ Depth_____
   Remarks_____

2. **Vegetative Growth** ☐ Location shown on site map ☐ N/A
   ☐ Vegetation does not impede flow
   Areal extent_____ Type_____
   Remarks_____

3. **Erosion** ☐ Location shown on site map ☐ Erosion not evident
   Areal extent_____ Depth_____
   Remarks_____

4. **Discharge Structure** ☐ Functioning ☐ N/A
   Remarks_____

VIII. VERTICAL BARRIER WALLS ☐ Applicable ■N/A

1. **Settlement** ☐ Location shown on site map ☐ Settlement not evident
   Areal extent_____ Depth_____
   Remarks_____

2. **Performance Monitoring** Type of monitoring_____
   ☐ Performance not monitored
   Frequency_____ ☐ Evidence of breaching
   Head differential_____
   Remarks_____

IX. GROUNDWATER/SURFACE WATER REMEDIES ☐ Applicable ■N/A	
A. Groundwater Extraction Wells, Pumps, and Pipelines ☐ Applicable ☐ N/A	
1.	**Pumps, Wellhead Plumbing, and Electrical** ☐ Good condition ☐ All required wells properly operating ☐ Needs Maintenance ☐ N/A Remarks_____
2.	**Extraction System Pipelines, Valves, Valve Boxes, and Other Appurtenances** ☐ Good condition ☐ Needs Maintenance Remarks_____
3.	**Spare Parts and Equipment** ☐ Readily available ☐ Good condition ☐ Requires upgrade ☐ Needs to be provided Remarks_____
B. Surface Water Collection Structures, Pumps, and Pipelines ☐ Applicable ☐ N/A	
1.	**Collection Structures, Pumps, and Electrical** ☐ Good condition ☐ Needs Maintenance Remarks_____
2.	**Surface Water Collection System Pipelines, Valves, Valve Boxes, and Other Appurtenances** ☐ Good condition ☐ Needs Maintenance Remarks_____
3.	**Spare Parts and Equipment** ☐ Readily available ☐ Good condition ☐ Requires upgrade ☐ Needs to be provided Remarks_____

C. Treatment System ☐ Applicable ☐ N/A

1. **Treatment Train** (Check components that apply)
   ☐ Metals removal ☐ Oil/water separation ☐ Bioremediation
   ☐ Air stripping ☐ Carbon adsorbers
   ☐ Filters_____
   ☐ Additive (*e.g.*, chelation agent, flocculent)_____
   ☐ Others_____
   ☐ Good condition ☐ Needs Maintenance
   ☐ Sampling ports properly marked and functional
   ☐ Sampling/maintenance log displayed and up to date
   ☐ Equipment properly identified
   ☐ Quantity of groundwater treated annually_____
   ☐ Quantity of surface water treated annually_____
   Remarks_____

2. **Electrical Enclosures and Panels** (properly rated and functional)
   ☐ N/A ☐ Good condition ☐ Needs Maintenance
   Remarks_____

3. **Tanks, Vaults, Storage Vessels**
   ☐ N/A ☐ Good condition ☐ Proper secondary containment ☐ Needs Maintenance
   Remarks_____

4. **Discharge Structure and Appurtenances**
   ☐ N/A ☐ Good condition ☐ Needs Maintenance
   Remarks_____

5. **Treatment Building(s)**
   ☐ N/A ☐ Good condition (esp. roof and doorways) ☐ Needs repair
   ☐ Chemicals and equipment properly stored
   Remarks_____

6. **Monitoring Wells** (pump and treatment remedy)
   ☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
   ☐ All required wells located ☐ Needs Maintenance ☐ N/A
   Remarks_____

D. Monitoring Data

1. Monitoring Data
   ☐ Is routinely submitted on time ☐ Is of acceptable quality

2. Monitoring data suggests:
   ☐ Groundwater plume is effectively contained ☐ Contaminant concentrations are declining

D. Monitored Natural Attenuation

1. **Monitoring Wells** (natural attenuation remedy)
   ☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
   ☐ All required wells located ☐ Needs Maintenance ☐ N/A
   Remarks_____

X. OTHER REMEDIES

If there are remedies applied at the site which are not covered above, attach an inspection sheet describing the physical nature and condition of any facility associated with the remedy. An example would be soil vapor extraction.

XI. OVERALL OBSERVATIONS

A. Implementation of the Remedy

Describe issues and observations relating to whether the remedy is effective and functioning as designed. Begin with a brief statement of what the remedy is to accomplish (i.e., to contain contaminant plume, minimize infiltration and gas emission, etc.).

The remedy for Site IR02, removal of shallow soils exceeding cleanup levels, has been implemented and completed. Western one-third of Site IR02 has no ICs; eastern two-thirds has ICs for industrial use.

B. Adequacy of O&M - N/A

Describe issues and observations related to the implementation and scope of O&M procedures. In particular, discuss their relationship to the current and long-term protectiveness of the remedy.

C.	**Early Indicators of Potential Remedy Problems**
	Describe issues and observations such as unexpected changes in the cost or scope of O&M or a high frequency of unscheduled repairs, which suggest that the protectiveness of the remedy may be compromised in the future.

D. Opportunities for Optimization

Describe possible opportunities for optimization in monitoring tasks or the operation of the remedy.

ATTACHMENT C

PHOTOGRAPHS OF SITE IR02 TAKEN DURING SITE INSPECTION

MAY 10, 2005

FIRST FIVE-YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

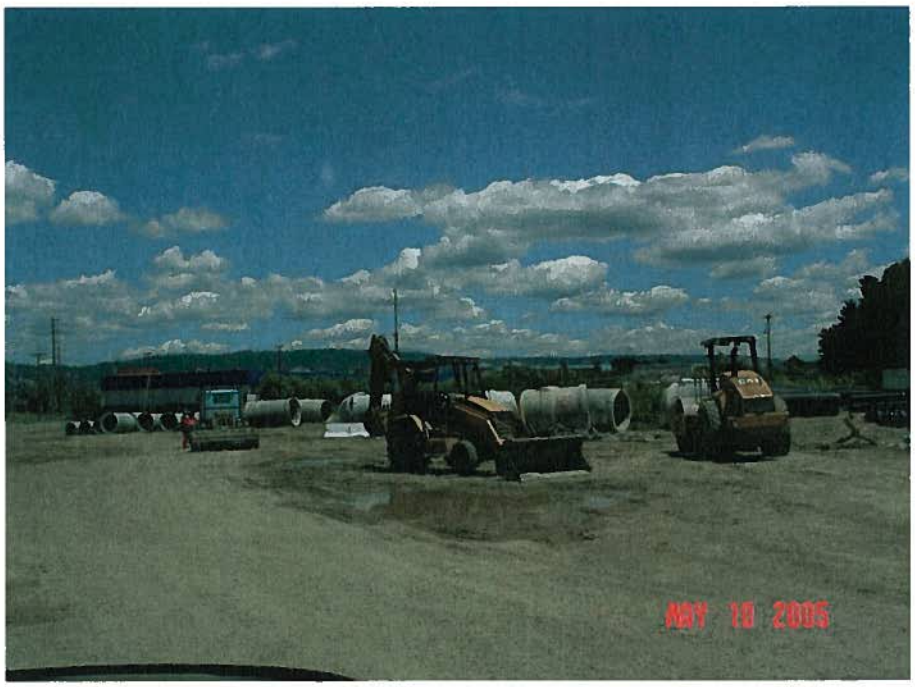
SITE IR02

ATTACHMENT C

PHOTOGRAPHS OF SITE IR02 TAKEN DURING SITE INSPECTION ON MAY 10, 2005
FIRST FIVE-YEAR REVIEW
PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION - SITE IR02

Looking west – residential use portion of Site IR02, existing housing on adjacent property

Looking northwest - residential use portion of Site IR02, existing housing on adjacent property



Looking east – industrial use portion of Site IR02

Looking east – industrial use portion of Site IR02, fence along eastern border of property

ATTACHMENT D

INTERVIEW DOCUMENTATION FORM

FIRST FIVE YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

ATTACHMENT D

INTERVIEW DOCUMENTATION FORM
FIRST FIVE-YEAR REVIEW
PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION at SITE IR02

Name	Title / Position	Organization	Interview Date and Location
Mr. Doug DeLong	Environmental Compliance Manager	BRAC Program Management Office West Department of the Navy	May 10, 2005 Alameda Annex and Point
Mr. Philip Owen	Director of Construction	Catellus Commercial Development Corporation	May 10, 2005 Site IR02
Mr. Henry Wong	Remedial Project Manager	California Environmental Protection Agency, Department of Toxic Substances Control	May 11, 2005 DTSC Office, Berkeley
Ms. Debbie Potter	Base Reuse & Redevelopment Manager	City of Alameda	May 12, 2005 Alameda Point
Peter Russell, Ph.D., P.E.	Principal	Russell Resources, Inc. (Consultant to the City of Alameda)	May 12, 2005 Alameda Point
Mr. Gregory McFann	Chief, Planning and Building Department	City of Alameda	May 12, 2005 Alameda City Hall
Mr. Thomas Macchiarella	Alameda BRAC Environmental Coordinator	BRAC Program Management Office West Department of the Navy	May 18, 2005 SWDIV San Diego
Mr. Ken Hansen	Community Co-Chair, Alameda Annex	Restoration Advisory Board	May 20 & 24, 2005 Email and phone
Mr. Lou Ocampo	Remedial Project Manager	BRAC Program Management Office West Department of the Navy	June 10, 2005 Email and phone

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ATTACHMENT E

INTERVIEW RECORDS

FIRST FIVE YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

ATTACHMENT E

INTERVIEW RECORDS

FIRST FIVE-YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION - SITE IR02

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 11:30 AM	**Date:** May 10, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** Alameda Point Main Office Repository	☐ Incoming ☐ Outgoing	
Contact Made By:		
Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell
Individual Contacted:		
Name: Mr. Doug DeLong	**Title:** Environmental Compliance Manager	**Organization:** BRAC Management Office West, DON
Telephone No: 415.743.4713 **Fax No:** 415.743.4700 **E-Mail Address:** douglas.delong@navy.mil	**Street Address:** 410 Palm Avenue B-1, Suite 161 **City, State, Zip:** San Francisco, CA 94130-1806	

Summary Of Conversation

Q: Has your office conducted site visits, inspections?

A: Yes.

Q: Do you receive communication on activities at Site IR02?

A: Yes.

Q: Have there been complaints, violations, or other incidents related to Site IR02 that required your office to respond?

A: No.

Q: Do you feel well informed about the activities at Site IR02?

A: Yes. Please note that Site IR02 no longer belongs to the Navy.

Q: Do you have any comments, suggestions, or recommendations as to the management of Site IR02 remediation?

A: No.

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 1:30 PM	**Date:** May 10, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** Site IR02	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Philip Owen	**Title:** Director of Construction	**Organization:** Catellus

Telephone No: 510.337.8735 **Fax No:** 510.337.0440 **E-Mail Address:** philip_owen@catellus.com	**Street Address:** 1999 Harrison Street, Suite 2150 **City, State, Zip:** Oakland, CA 94612

Summary Of Conversation

Navy completed the shallow soil remediation. Site IR02 has been secured; there is no trespassing, or illegal dumping.

The western one-third of Site IR02 is planned to be developed for residential use, and the eastern two-thirds of the site is planned to be developed for industrial use.

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 2:00 PM	**Date:** May 11, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** DTSC Office of Military Facilities, Berkeley	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Henry Wong	**Title:** Remedial Project Manager	**Organization:** DTSC

Telephone No: 510.540.3770 **Fax No:** 510.849.5285 **E-Mail Address:** hwong@dtsc.ca.gov	**Street Address:** 700 Heinz Ave., Suite 200 **City, State, Zip:** Berkeley, CA. 94710-2721

Summary Of Conversation

Q: Has your office conducted site visits, inspections?

A: Yes. I periodically visit the site. I tour the Annex sites with the RAB at least once a year, and we recently visited Site IR02.

Q: Do you receive communication on activities at Site IR02?

A: Yes. I receive communications monthly. We have face to face or telephone conferences with the BCT, as well as with the City of Alameda and Catellus.

Q: Have there been complaints, violations, or other incidents related to Site IR02 that required your office to respond?

A: No. None were received by my office, and no deviations were reported.

Q: Do you feel well informed about the activities at Site IR02?

A: Yes. I visit the site, it is an active project.

Q: Do you have any comments, suggestions, or recommendations as to the management of Site IR02 remediation?

A: No. Site IR02 soil remediation has been completed. There have not been changes to PCB and cadmium cleanup goals since then.

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 11:00 AM	**Date:** May 12, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** City of Alameda City Hall West, Alameda Point	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Ms. Debbie Potter	**Title:** Base Reuse & Redevelopment Manager	**Organization:** City of Alameda
Telephone No: 510.749.5833 **Fax No:** 510.749.5808 **E-Mail Address:** dpotter@ci.alameda.ca.us	**Street Address:** 950 West Mall Square, Room 215 **City, State, Zip:** Alameda, CA 94501-7552	

Summary Of Conversation

Ms. Potter was joined by Mr. Peter Russell, PhD., P.E., consultant to the City of Alameda in this interview.

Q: Has your office conducted site visits, inspections?

A: City of Alameda Building and Planning Department issues excavation permits – they would visit and inspect Site IR02 if there was a need or demand.

Q: Do you receive communication on activities at Site IR02?

A: Yes. The City of Alameda manages the Site IR02 Catellus Project, and communicates with Catellus regularly.

Q: Have there been complaints, violations, or other incidents related to Site IR02 that required your office to respond?

A: City of Alameda Building and Planning Department would receive such complaints.

Q: Do you feel well informed about the activities at Site IR02?

A: Yes.

Q: Do you have any comments, suggestions, or recommendations as to the management of Site IR02 remediation?

A: No.

Q: Do you feel that the Land Use Controls in effect for the shallow soils of the industrial use portions of Site IR02 are protective?

A: Yes.

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 2:00 PM	**Date:** May 12, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** City of Alameda City Hall	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Gregory McFann	**Title:** Chief of Building and Planning	**Organization:** City of Alameda
Telephone No: 510.747.6820 **Fax No:** 510.747.6804 **E-Mail Address:** gmcfann@ci.alameda.ca.us	**Street Address:** 2263 Santa Clara Avenue, Room 190 **City, State, Zip:** Alameda, CA 94501-4477	

Summary Of Conversation

Mr. McFann's department conducts site inspections.

City of Alameda does not regulate resale of houses, or the real estate agents who sell them.

Land Use Controls documents are filed at the County Recorder's Office for Alameda County.

Any one can visit the City Clerk's Office on the 3rd floor of the Alameda City Hall and request a copy of any City Ordinance.

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 9:30 AM	**Date:** May 18, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** SWDIV, San Diego	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Thomas Macchiarella	**Title:** BRAC Environmental Coordinator	**Organization:** BRAC Management Office West, DON

Telephone No: 619.532.0907 **Fax No:** 619.532.0940 **E-Mail Address:** thomas.macchiarella@navy.mil	**Street Address:** 1230 Columbia Street, Suite 1100 **City, State, Zip:** San Diego, CA 92101-8571

Summary Of Conversation

Q: What effects have the remedy selected for Site IR02 had on the surrounding community?

A: The community has been able to redevelop this site due to the success of the remedy. No continuing concerns have been expressed.

Q: Are you aware of any community concerns regarding Site IR02 or administration of the remedy?

A: No.

Q: Are you aware of events or incidents such as vandalism, or emergency responses from local authorities?

A: No.

Q: Do you feel well informed about the activities at Site IR02?

A: Yes. I am a member of the BRAC Cleanup Team; we meet monthly and discuss the Alameda Annex, including Site IR02.

Q: Do you have any comments, suggestions, or recommendations as to the management of Site IR02 remediation?

A: No.

Q: What is your overall impression of the shallow soil remedy implemented at Site IR02?

A: The remedy has been successfully implemented, and it is continuing to be effective.

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 11:00 AM	**Date:** May 20 & 24, 2005
Type: ■ Telephone ☐ Visit ■ Other - email **Location of Visit:** --	■ Incoming ■ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Ken Hansen	**Title:** Community Co-Chair, Alameda Annex	**Organization:** Restoration Advisory Board (RAB)
Telephone No: 510.444.0515 **Fax No:** **E-Mail Address:** hansengoodcoffee@aol.com	**Street Address:** 327 Clay Street **City, State, Zip:** Oakland, CA 94607	

Summary Of Conversation

Q: What is your overall impression of the remedy implemented for the shallow soils of Site IR02?

A: Very thorough work. The site was gridded, and sampled. Contaminated soils were dug up and moved off-site. I visited the site during this work. The work was done very conscientiously; soils were resampled if there was doubt, and excavated to different depths.

Q: What effects have the remedy selected for Site IR02 had on the surrounding community?

A: I have not heard any comments.

Q: Are you aware of any community concerns regarding the remedy implemented at Site IR02?

A: No concerns have been expressed to me.

Q: Are you aware of events or incidents such as vandalism, or emergency responses from local authorities with respect to this remedy?

A: No.

Q: Do you feel well informed about the remedy implemented at Site IR02?

A: Yes. I am a member of the RAB; we receive reports, and we meet regularly and discuss the Alameda Annex, including Site IR02.

Q: Do you have any comments, suggestions, or recommendations as to the implementation of Site IR02 remediation?

A: No.

Q: Are there any other thoughts or concerns that you may have on the Site IR02 shallow soil remediation?

A: No.

Site Name: Site IR02, Fleet and Industrial Supply Center Oakland	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Site IR02 Shallow Soil Remediation	**Time:** 9:30 AM	**Date:** June 10, 2005
Type: ■ Telephone ☐ Visit ■ Other - email **Location of Visit:** --	■ Incoming ■ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Luciano Ocampo	**Title:** Remedial Project Manager	**Organization:** BRAC Management Office West, DON

Telephone No: 619-532-0969 **Fax No:** 619-532-0940 **E-Mail Address:** luciano.ocampo@navy.mil	**Street Address:** 1230 Columbia Street, Suite 1100 **City, State, Zip:** San Diego, CA 92101-8571

Summary Of Conversation

Q: What is your overall impression of the shallow soil remedy implemented at Site IR02?

A: Good job, well done.

Q: Overall, have you been pleased with the remedy implemented at Site IR02?

A: Yes.

Q: What effects have the remedy selected for Site IR02 had on the surrounding community?

A: I did not encounter any negative effects on the community.

Q: Are you aware of any community concerns regarding Site IR02 or administration of the remedy?

A: No.

Q: Are you aware of events or incidents such as vandalism, or emergency responses from local authorities?

A: No.

Q: Do you feel well informed about the activities at Site IR02?

A: Yes. I am the Navy's RPM on that project.

Q: Do you have any comments, suggestions, or recommendations as to the management of Site IR02 remediation?

A: No.

ATTACHMENT F

APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARs) ANALYSIS REVIEW

FIRST FIVE YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

ATTACHMENT F

APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARs) REVIEW
FIRST FIVE-YEAR REVIEW
PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION - SITE IR02

ARARS in the Site IR02 Record of Decision dated June 25, 2001	Regulated Parameter	Latest Regulation Reviewed	Conclusion as to whether there are any updates that could potentially affect the protection of human health and the environment
40 C.F.R. §761.61(a)(4)(i)(A)	PCB Cleanup Level	7-01-04 Edition of 40 C.F.R. with the following federal register citation: 63 FR 35448, June 29, 1998, as amended at 64 FR 33761, June 24, 1999 Used the following website: http://www.access.gpo.gov/nara/cfr/cfr-table-search.html	No substantive changes to the PCB cleanup levels.
40 C.F.R. §761.61(a)(4)(i)(B)	PCB Cleanup Level	7-01-04 Edition of 40 C.F.R. with the following federal register citation: 63 FR 35448, June 29, 1998, as amended at 64 FR 33761, June 24, 1999 Used the following website: http://www.access.gpo.gov/nara/cfr/cfr-table-search.html	No substantive changes to the PCB cleanup levels.
40 C.F.R. §761.61(c)	PCB Cleanup Level	7-01-04 Edition of 40 C.F.R. with the following federal register citation: 63 FR 35448, June 29, 1998, as amended at 64 FR 33761, June 24, 1999 Used the following website: http://www.access.gpo.gov/nara/cfr/cfr-table-search.html	No substantive changes to the PCB cleanup levels.
40 C.F.R. §761.61(a)(5)(i)(B)(2)(ii)	PCB Cleanup Level	7-01-04 Edition of 40 C.F.R. with the following federal register citation: 63 FR 35448, June 29, 1998, as amended at 64 FR 33761, June 24, 1999 Used the following website: http://www.access.gpo.gov/nara/cfr/cfr-table-search.html	No substantive changes to the PCB cleanup levels.

ARARS in the Site IR02 Record of Decision dated June 25, 2001	Regulated Parameter	Latest Regulation Reviewed	Conclusion as to whether there are any updates that could potentially affect the protection of human health and the environment
Cal. Civil Code §1471	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment.
Cal. Health & Safety Code §25202.5	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment.
Cal. Health & Safety Code §25222.1	Institutional Control	California Codes have been updated to include the 2004 Statutes. Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment.
Cal. Fish & Game Code §5650	Prohibited discharge during soil removal	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	The removal of soil for this action is complete and this requirement is no longer pertinent.
Bay Area Air Quality Management District (BAAQMD) Regulation 8-40	Emissions requirements during excavation and removal of soil	December 15, 1999 Used the following website: http://www.baaqmd.gov/dst/regs/rulereg.asp?Grp=10	The removal of soil for this action is complete and this requirement is no longer pertinent.

ARARS in the Site IR02 Record of Decision dated June 25, 2001	Regulated Parameter	Latest Regulation Reviewed	Conclusion as to whether there are any updates that could potentially affect the protection of human health and the environment
BAAQMD Regulation 6-301	Emissions requirements during excavation and removal of soil	December 19, 1990 Used the following website: http://www.baaqmd.gov/dst/regs/rulereg.asp?Grp=10	The removal of soil for this action is complete and this requirement is no longer pertinent.
BAAQMD Regulation 6-302	Emissions requirements during excavation and removal of soil	December 19, 1990 Used the following website: http://www.baaqmd.gov/dst/regs/rulereg.asp?Grp=10	The removal of soil for this action is complete and this requirement is no longer pertinent.
BAAQMD Regulation 6-305	Emissions requirements during excavation and removal of soil	December 19, 1990 Used the following website: http://www.baaqmd.gov/dst/regs/rulereg.asp?Grp=10	The removal of soil for this action is complete and this requirement is no longer pertinent.
40 C.F.R. §264.554	Staging Pile requirements for temporary soil storage	7-01-04 Edition of 40 C.F.R. with the following federal register citation: 63 FR 65939, Nov. 30, 1998, as amended at 67 FR 3028, Jan. 22, 2002 Used the following website: http://www.access.gpo.gov/nara/cfr/cfr-table-search.html	The removal of soil for this action is complete and this requirement is no longer pertinent.

CCR Title 22, §67391.1. Requirements for Land Use Covenants.

(a) Except as provided in subsection (f) of this section, a land use covenant imposing appropriate limitations on land use shall be executed and recorded when:

(1) Facility closure, corrective action, remedial or removal action, or other response actions are undertaken pursuant to chapter 6.5, 6.8, or 6.85 of division 20 of the Health and Safety Code, or article 1 of chapter 1, part 10.5 of the Education Code; and

(2) Hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land.

(b) The Department shall not approve or concur in a response action decision document which includes limitations on land use or other institutional controls, unless the limitations or controls are clearly set forth and defined in the response action decision document. Except as provided in subsection (f) of this section, any response action decision document shall (1) specify that the limitations or controls will be incorporated into an appropriate land use covenant as required by this section and (2) include an implementation and enforcement plan. The Department shall provide public notice of the response action decision document in a manner that meets the requirements of Health and Safety Code section 25356.1(e)(2) or section 25398.6(i). DTSC will consult with local agencies, including local reuse authorities, as appropriate.

(c) Except as provided in subsection (f) of this section,

(1) The Department shall not certify that a response action has been satisfactorily completed, with the exception of any necessary long term operation and maintenance activities, until such land use covenants required by this section have been signed and recorded in the county, or

(2) The Department shall not acknowledge final certification of closure of a hazardous waste disposal unit until such land use covenants required by this section also meet the requirements of sections 66264.119 or 66265.119 as applicable.

(d) All land use covenants pursuant to this section shall be executed by the Department and the landowner and shall be recorded in the county where the land is located. All land use covenants shall run with the land pursuant to Civil Code section 1471 and/or Health and Safety Code sections 25202.5, 25222.1, 25355.5, or 25398.7 and 25396(*l*) and shall continue in perpetuity unless modified or terminated in accordance with applicable law.

(e) Federal Property.

(1) The Department shall not consider property owned by the federal government to be suitable for transfer to nonfederal entities pursuant to 42 United States Code section 9620(h)3-4 where hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels which are not suitable for unrestricted use of the land, unless an appropriate land use covenant will be executed by the Department and the federal government and recorded in the county where the land is located in accordance with this section.

(2) Whenever the Department determines that it is not feasible to record a land use covenant for property owned by the federal government, such as transfers from one federal agency to another, the Department and federal government may use other mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property. Examples include: Amendments to the federal government facility master plan, physical monuments, or agreements between the federal government facility and the Department.

(f) Whenever the Department determines that it is not feasible to establish a land use covenant as a component of a remedy for a site, it may use other institutional control mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property.

(1) Examples include publicly owned tidelands trust property: such mechanisms may include, but are not limited to physical monuments, or a memorandum of agreement or consent agreement between the Department and the trustee for the tideland trust property.

(2) If the Department subsequently determines that it is feasible to record land use covenants for such sites, the Department shall ensure that the land use covenants are recorded in accordance with (d).

(g) Modification and Termination. The Department may modify or terminate land use covenants if it determines such modification or termination is protective of public health and safety and the environment.

(h) The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls.

(i) For purposes of this section:

(1) "Department" means the Department of Toxic Substances Control.

(2) "Federal property" means that property found in the Federal Property and Administrative Services Act of 1949, as amended, 40 United States Code sections 471 et seq.

(3) "Land use covenants" include easements, servitudes, covenants and restrictions which run with the land and restrict uses to protect public health and safety and the environment.

(4) "Response action decision document" means a remedial action plan, removal action workplan, record of decision, closure plan, documents written pursuant to a corrective action order or corrective action consent agreement, or other similar documents which formally select an action to be taken in response to the release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances.

(5) "Unrestricted use of the land" means that the land may be used for any purpose.

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ATTACHMENT G

HUMAN HEALTH RISK ASSESSMENT (HHRA) REVIEW

FIRST FIVE YEAR REVIEW

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

ATTACHMENT G

HUMAN HEALTH RISK ASSESSMENT (HHRA) REVIEW
FIRST FIVE-YEAR REVIEW
PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION - SITE IR02

The cadmium cleanup levels of 12 milligram/kilogram (mg/kg) for residential exposure and 450 mg/kg for industrial exposure were based on a non-cancer endpoint. For the residential exposure scenario this included ingestion of soil, dermal contact with soil and ingestion of homegrown produce. For the industrial exposure scenario this included ingestion of soil and dermal contact with soil. The inhalation of dust exposure pathway was not included because an inhalation reference dose is not available, and inhalation was determined to be an insignificant exposure pathway.

Toxicity Factors -

The U.S. EPA oral reference dose of 5E-04 mg/kg-day used is current. In the FS, the oral reference dose was updated to 1E-03. The oral reference dose of 5E-04 is based on water, 1E-03 is more appropriate for exposure to cadmium in soil and garden produce. The DTSC inhalation slope factor of 1.5E+01 $(mg/kg\text{-}day)^{-1}$ used is current.

Residential Exposure Assumptions -

Inhalation - the value of 5E-08 kg/m^3 used for the particulate emission factor (PEF) is from DTSC 1994. While currently the PEF presented in the U.S. EPA PRG table (1.316E+09 m^3/kg = 8E-10 kg/m^3) is used by many, the DTSC 1994 PEF is also still used. A change in this value would not impact the cleanup levels of 12 mg/kg for residential or 450 mg/kg for industrial worker because the inhalation exposure pathway was not included in the derivation of the cleanup level.

Ingestion - the values used are current.

Dermal - the values used were from DTSC 1992 and they are current except for the future residential adult exposure frequency of 100 days/year. This value has been updated by DTSC to 350 days/year (although the actual document has not been updated - this is a verbal update). This change would not impact the cleanup level of 12 mg/kg as it was based on exposure by a child. There is a newer dermal guidance (U.S. EPA 2001) which updates the adherence factors and exposed surface areas, but for DTSC, the values used are current with the noted exception.

Plants - there are no set input parameters for this pathway. The values used for ingestion of produce are from DTSC 1992 and they are current. The bioconcentration factor was updated in the FS. The value for cadmium was taken from a study by C.F. Baes for consistency with other Navy bases.

Industrial Exposure Assumptions –

Inhalation – same as residential exposure assumptions discussed above.

Ingestion - The ingestion rate of 50 mg/kg is from DTSC 1992 and this ingestion rate is current. There is a newer dermal guidance (U.S. EPA 2001) which updates the adherence factors and exposed surface areas, but for DTSC, the values used are current.

Dermal - the values used were from DTSC 1992 and they are current.

Construction Exposure Assumptions –

There are no set input parameters for this receptor. The values used in the risk assessment are site-specific. Changes would not impact the industrial cleanup level of 450 mg/kg as it was based on exposure by an industrial worker, not a construction worker.

In conclusion, the human health risk assessment for Site IR02 shallow soils has been conducted using the DTSC's exposure assumptions which are still current. The only value that has changed since then is the residential adult exposure frequency for dermal contact with soil. However, this change would not impact the residential cleanup level as it was calculated for a child.

ATTACHMENT H

COPIES OF:

"QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTIONS PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1471 FOR FISC ALAMEDA" BETWEEN THE DEPARTMENT OF THE NAVY AND THE CITY OF ALAMEDA, DATED JULY 17, 2000, RECORDED ON JULY 20, 2000.

and

"INTERIM COVENANT TO RESTRICT USE OF PROPERTY – ENVIRONMENTAL RESTRICTION, RE: FLEET AND INDUSTRIAL SUPPLY CENTER, ALAMEDA ANNEX" BETWEEN THE DEPARTMENT OF THE NAVY AND THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL, RECORDED ON JULY 20, 2000.

and

DTSC LETTER TO DEPARTMENT OF THE NAVY, DATED FEBRUARY 27, 2004, RE: "FINAL CLOSEOUT REPORT, REMOVAL OF CONTAMINATED SURFACE SOIL AT INSTALLATION RESTORATION SITE 02 (IR02), FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX (FISCA), ALAMEDA, CALIFORNIA

RECORDING REQUESTED BY

And when recorded, mail this deed and, unless otherwise shown below, mail tax statements to:

James M. Flint, City Manager
City of Alameda
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501-4456

TRUE COPY of Document Recorded on July 20, 2000 as No. 2000 215933
FIRST AMERICAN TITLE COMPANY
Sheryl Taylor

QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTIONS PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1471 FOR FISC ALAMEDA

This Deed is made this 17th day of July, 2000, by and between the **United States of America**, acting by and through the Department of the Navy, hereinafter called the **GRANTOR**, and the **City of Alameda**, a municipal corporation of the State of California, hereinafter called the **GRANTEE**.

WITNESSETH:

WHEREAS, the GRANTEE has requested conveyance from the GRANTOR of approximately one hundred and forty seven (147) acres of property comprising the Fleet and Industrial Supply Center, Alameda Facility/Annex, hereinafter referred to as the "Property," which was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, (Pub. L. No. 101-510), 10 U.S.C. § 2687 note, as amended, and which is no longer required for military purposes; and

WHEREAS, the GRANTOR is authorized to convey the Property to the GRANTEE pursuant to Section 2834(b) of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. No. 102-484), as amended; and

WHEREAS, the GRANTOR has not completed remedial actions on the Property that are necessary to provide the covenants required by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. Section 9620(h)(3)(A)(ii)(I); and

WHEREAS, the GRANTOR has found and determined that the Property is suitable for early transfer in advance of providing the required covenants pursuant to a Finding of Suitability for Early Transfer and Environmental Response Obligation Addendum (FOSET/EROA), dated February 18, 2000; and

WHEREAS, the GRANTOR has provided the assurances required by CERCLA 42 U.S.C. Section 9620(h)(3)(C), and has complied with other statutory conditions necessary for the early transfer of the Property following the due execution of a FOSET; and

WHEREAS, GRANTOR has determined pursuant to applicable Federal statutes and regulations and California Civil Code Section 1471(c) that it is reasonably necessary to impose certain restrictions on the use of the Property to protect present and future human health or safety or the environment as a result of the presence of hazardous materials on portions of the Property described hereinafter with particularity.

NOW THEREFORE, the GRANTOR, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever quitclaim to the GRANTEE, all of GRANTOR'S right, title and interest in and to that certain real property, comprising the Property, as more particularly described in Exhibit "A."

I. **TOGETHER WITH** all buildings, improvements, and related personal property located thereon, and all rights, tenements, hereditaments, and appurtenances belonging, or in any wise appertaining, including fixtures, structures, mineral rights, water rights, the banks, beds and waters of any streams, rivers or lakes upon said Property, appurtenant easements, rail lines and utility lines, alleys, roads, streets ways, strips, gores or railroad rights of way upon said Property, and any means of ingress and egress appurtenant thereto.

II. **SUBJECT TO THE FOLLOWING NOTICES, COVENANTS, RESTRICTIONS, AND CONDITIONS,** which shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity:

A. The GRANTEE agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances of record.

B. Except as otherwise provided herein, or as otherwise provided by law, the GRANTEE acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of the GRANTOR regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation required to be undertaken by GRANTOR, the GRANTEE further acknowledges that the GRANTOR shall not be liable for any latent or patent defects in the Property except to the extent required by applicable law.

C. To the extent that any portion of the Property lies within a floodplain as defined in Section 6(c) of Executive Order No. 11988, dated May 24, 1977, the use of that portion of the Property may be subject to the National Flood Insurance Program.

D. LEAD BASED PAINT (LBP).

1. The GRANTEE is hereby informed and does acknowledge that the Property includes buildings and structures that, due to their age, are presumed to contain LBP. Lead from paint, paint chips, and dust can pose health hazards if not managed properly.

2. The GRANTEE covenants and agrees that in its use and occupancy of the Property, it will comply with all applicable Federal, State, and local laws relating to LBP. The GRANTEE acknowledges that the GRANTOR assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE, 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 LBP on the Property, arising after the conveyance of the Property from the GRANTOR to the GRANTEE, whether the GRANTEE has properly warned, or failed to properly warn, the persons injured.

3. The GRANTOR shall provide a Notice of Release (NOR), in recordable form, to the GRANTEE at such time as demolition of the buildings on the Property containing LBP has been completed and the appropriate Federal or State regulatory agency(s) have concurred in writing that LBP has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable Federal, State, and local laws and regulations. This NOR shall be deemed to remove all notices and restrictions relating to LBP from the Property.

E. ASBESTOS CONTAINING MATERIALS (ACM).

1. The GRANTEE is hereby informed and does acknowledge that asbestos or ACM have been found and are otherwise presumed to exist in buildings and structures on the Property. The GRANTEE acknowledges receipt of documentation disclosing the presence of any known ACM in the buildings and structures on the Property. The GRANTEE covenants that it will prohibit occupancy of buildings and structures, or portions thereof, containing known ACM prior to abatement of the ACM or demolition of the building or structure.

2. The GRANTEE covenants and agrees that in its use and occupancy of the Property, including but not limited to demolition of buildings containing ACM, it will comply with all applicable Federal, State and local laws relating to ACM. The GRANTEE acknowledges that the GRANTOR assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or activity causing or leading to contact of any kind whatsoever with ACM in the structures on the Property, arising after the conveyance of the Property from the GRANTOR to the GRANTEE, whether the GRANTEE has properly warned, or failed to properly warn the persons injured.

3. The GRANTOR shall provide an NOR, in recordable form, to the GRANTEE at such time as demolition of the buildings on the Property containing ACM has been completed and the appropriate Federal or State regulatory agency(s) have certified in writing that ACM has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable Federal, State, and local laws and regulations. This NOR shall be deemed to remove all notices and restrictions relating to ACM from the Property.

F. NOTICE OF COVENANT DEFERRAL: Pursuant to the requirements for "covenant deferral" of CERCLA 42 U.S.C. Section 9620(h)(3)(C), as amended by Section 334 of the National Defense Authorization Act for Fiscal Year 1997 [Pub. L. No. 104-201; 42 U.S.C. 9620(h)(3)(C)], the following notices, assurances, covenants and declarations apply to the Property.

1. Hazardous Substance Notification. Notice is hereby provided that the information set out in Exhibit "B", attached hereto and made a part hereof, identifies hazardous substances that were stored for one year or more, known to have been released, or disposed of on this Property. The GRANTOR has made a complete search of its files and records concerning the Property and found that Exhibit "B" provides: (1) notice of the type and quantity of such hazardous substances, (2) notice of the time the storage, release, or disposal took place, and (3) a description of the remedial action taken, if any.

2. Access [CERCLA 42 U.S.C. Section 9620(h)(3)(A)(iii)]. GRANTOR reserves access to and the right to use of the Property in any case in which a remedial or corrective action is found to be necessary after the date of the conveyance of the Property. In exercising this right of access, except in the case of imminent and substantial endangerment to human health or the environment, the GRANTOR: (a) shall give the GRANTEE reasonable prior written notice of actions to be taken related to such remedial or corrective actions on the Property, and (b) make reasonable efforts to minimize interference with the ongoing use of the Property. Furthermore, the GRANTOR and GRANTEE agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and the GRANTEE's use of the Property. Any inspection, survey, investigation, or other response, corrective or remedial action undertaken by the GRANTOR will, to the maximum extent practicable, be coordinated with representatives designated by the GRANTEE.

3. Additional Remediation Obligation [CERCLA 42 U.S.C. Section 9620(h)(3)(A)(ii)(II)]. The GRANTOR covenants and warrants that GRANTOR shall conduct any additional remedial action necessary after the date of transfer for any hazardous substance existing on the Property prior to the date of this Deed. This covenant shall not apply to the extent that the GRANTEE caused or contributed to any release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative.

4. Response Action Assurances [CERCLA 42 U.S.C. Section 9620(h)(3)(C)(ii)]:

a. Necessary Restrictions to Protect Human Health and the Environment [CERCLA 42 U.S.C. Section 9620(h)(3)(C)(ii)(I)]. The following environmental covenants, conditions, and restrictions (hereinafter "environmental restrictions") regarding the use of the Property have been determined by the GRANTOR in this Covenant to be reasonably necessary to protect present or future human health or safety or the environment as provided by CERCLA and California Civil Code Section 1471. The environmental restrictions made and accepted herein by GRANTEE shall be for the benefit of and enforceable by the GRANTOR herein as provided under Civil Code Section 1471, shall run with the land, and shall be binding on the GRANTEE, its successors and assigns. These environmental restrictions shall be released at such time as the GRANTOR has obtained written confirmation from California Department of Toxic Substances Control (DTSC) that the appropriate regulatory agency has determined that the restricted Property is protective of present or future human health or safety or the environment for the use that was formerly prohibited. Upon receipt of such written confirmation, the GRANTOR shall deliver to the GRANTEE in recordable form, a release (the Release) relating specifically to the environmental use restrictions set forth in this deed. The execution of the Release by the GRANTOR shall remove all notices and restrictions relating to the remedy addressed by the restrictions from the title to the Property.

i. GROUNDWATER USE RESTRICTION. The GRANTEE covenants and agrees not to construct or allow the construction of any water wells screened for extraction of groundwater from the shallowest groundwater zone (upper-water bearing unit in the artificial fill) within the boundaries of the Property. GRANTEE covenants and agrees not to extract that groundwater for any use other than irrigation, construction site dewatering, or emergency use (e.g., firefighting). Disposal of extracted groundwater from construction site dewatering into the waters of the State is prohibited except in compliance with the requirements of the Regional Water Quality Control Board, San Francisco Bay Region. GRANTEE will record that certain Covenant to Restrict Use of Property (Environmental Restrictions) (the "State Covenant"), in substantially the same form as Exhibit "C" attached hereto, by and between the City of Alameda, as Covenantor, and the California Environmental Protection Agency - Department of Toxic Substances Control (DTSC), as Covenantee, which sets forth restrictions on the use of ground water covered by this paragraph, prior to conveying the Property. GRANTOR and GRANTEE intend that the restrictions set out in this paragraph, which are enforceable by the United States of America acting by and through the Department of the Navy, shall be interpreted in a manner that is consistent and not in conflict with the restrictions set forth in the State Covenant which is enforceable by DTSC. A failure to enforce the State Covenant by DTSC shall not preclude the Department of Navy from enforcing this restriction.

ii. INTERIM RESTRICTIONS.

(a) The GRANTEE covenants and agrees that the following Interim Restrictions on use of the specified areas of the Property shall apply unless otherwise approved by the GRANTOR and DTSC as provided below:

Area 1: Area 1 is that portion of the Property as described and shown in Exhibit "D" and generally known as IR Site 02. Area 1 shall not be used for residential purposes and construction activities shall not begin until the GRANTOR and DTSC determine that the soils having polychlorinated biphenyls and cadmium concentrations have been properly remediated and the GRANTOR has recorded a release terminating these Interim Restrictions for Area 1 in accordance with Paragraph II.F.4.a. of this Covenant.

Area 2: Area 2 is that portion of the Property as described and shown in Exhibit "D". Area 2 shall not be used for residential purposes and construction activities shall not begin until the GRANTOR and DTSC determine that PAH concentrations in soil do not pose an unacceptable risk to human health or safety or the environment or have been properly remediated to make the Area suitable for residential use and the GRANTOR has recorded a release terminating these Interim Restrictions for Area 2 in accordance with Paragraph II.F.4.a. of this Covenant.

Area 3: Area 3, which is a sub-area of Area 2, is that portion of the Property as described and shown in Exhibit "D", and known generally as IR Sites 04/06. Construction activities in these areas shall not begin until the GRANTOR and DTSC determine that petroleum concentrations in soil do not pose an unacceptable risk to human health or safety or the environment or have been properly remediated and the GRANTOR has recorded a release terminating these Interim Restrictions for Area 3 in accordance with Paragraph II.F.4.a. of this Covenant.

(b) GRANTOR and GRANTEE acknowledge a certain Interim Covenant to Restrict Use of Property Environmental Restriction (Re: Fleet and Industrial Supply Center –Alameda Annex) dated _____, 2000 (the "Interim Covenant") by and between the GRANTOR, as Covenantor, and DTSC, as Covenantee, which also sets forth Interim Restrictions on residential use and construction activities covered by this Subparagraph II.F.4.a.ii. GRANTOR and GRANTEE intend that the Interim Restrictions set out in this Subparagraph II.F.4.a.ii, which are enforceable by the GRANTOR, shall be interpreted in a manner that is consistent and not in conflict with the interim restrictions set forth in Article IV of the Interim Covenant which is enforceable by DTSC. A failure to enforce the Interim Covenant by DTSC shall not preclude the GRANTOR from enforcing these restrictions.

(c) As used in this Subparagraph II.F.4.a.ii. "construction activities" shall mean any below ground demolition work and any above ground or below ground construction of any permanent structure, including utility lines, that would conflict with the final soil remedy approved by DTSC for the affected Area. Construction activities do

not include above ground demolition work. Any person desiring to conduct any restricted construction activities, including subsurface utility demolition or construction, in the Areas described above prior to the release of any applicable Interim Restrictions by the GRANTOR in accordance with this Subparagraph II.F.4.a.ii. shall apply to DTSC for approval to do so as provided in the Interim Covenant. Approval by GRANTOR of such activities shall not be required. Except as expressly provided in this Paragraph II.4.a., this Covenant does not restrict any use of the Property.

(d) Following completion of remediation of that portion of Area 1 (IR Site 02) planned for residential use by the GRANTEE as shown and described in Exhibit "E" hereto, the GRANTOR shall use best efforts to obtain DTSC's expeditious written concurrence that all necessary response action has been taken. Upon DTSC concurrence, GRANTOR shall expeditiously prepare a Release of the interim residential use restrictions set forth in Subparagraph II.F.4.a.ii. (a) of this Deed in recordable form as provided in said paragraph and deliver it to the GRANTEE.

iii. **MARSH CRUST/SUBTIDAL ZONE SOIL MANAGEMENT REQUIREMENTS.** "Marsh Crust" is defined as the underground layer that is the remnant of the tidal marsh that existed along the shoreline of Alameda Island before filling to create additional dry land. "Subtidal Zone" is defined as the underground layer that is the pre-filling San Francisco Bay floor extension of the historic marsh. These layers form a single continuous underground layer that extends Bayward of the original mean high tide line of Alameda Island before filling and contains hazardous materials and hazardous substances, pollutants, and contaminants that were retained in the historic marsh and Subtidal Zone before filling. The GRANTEE covenants and agrees that it shall comply with City of Alameda Ordinance No. 2824 regarding Excavation Into the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility. In the event that DTSC has notified the City that the Ordinance does not protect human health or safety or the environment, then GRANTEE covenants and agrees that it shall not excavate below the "threshold depth" as defined in the Excavation Ordinance, without prior written approval of DTSC. GRANTEE will record that certain Covenant to Restrict Use of Property (Environmental Restrictions) (the "State Covenant"), in substantially the same form as Exhibit "C" attached hereto, by and between the City of Alameda, as Covenantor, and the California Environmental Protection Agency - Department of Toxic Substances Control (DTSC), as Covenantee, which sets forth restrictions applicable to the Marsh Crust/Subtidal Zone covered by this paragraph, prior to conveying the Property. GRANTOR and GRANTEE intend that the restrictions set out in this paragraph, which are enforceable by the United States of America acting by and through the Department of the Navy, shall be interpreted in a manner that is consistent and not in conflict with the restrictions set forth in the State Covenant which is enforceable by DTSC. A failure to enforce the State Covenant by DTSC shall not preclude the Department of Navy from enforcing this restriction.

b. Disruption of Remedies [CERCLA 42 U.S.C. Section 9620(h)(3)(C)(ii)(II)]. The GRANTEE covenants not to engage in activities that will disrupt required remedial investigation, remedial actions, or oversight activities, should any be required of the GRANTOR on the Property. The GRANTOR and GRANTEE agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities at the Property, and the operations and construction activities of the GRANTEE, and successors, lessees, and contractors of the GRANTEE.

c. Response Action Assurance and Schedules for Investigation and Completion of all Necessary Response Action [CERCLA 42 U.S.C. Section 9620(h)(3)(C)(ii)(III)]. The Grantor hereby provides assurance that it will take all necessary response action at the Property as provided by CERCLA 42 U.S.C. Section 9620(h)(3)(C)(ii)(III). Schedules for investigation and completion of all necessary response action are identified and included as an Exhibit "G" to the Memorandum of Agreement for Conveyance of the Property (FISCA MOA).

d. Budget Requests [CERCLA 42 U.S.C. Section 9620(h)(3)(C)(ii)(IV)]. The GRANTOR hereby provides assurances that it will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response actions subject to Congressional authorization and appropriations.

5. Grant of Warranty [CERCLA 42 U.S.C. Section 9620(h)(3)(C)(iii)]. When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the GRANTOR shall execute and deliver to the GRANTEE an appropriate document containing a warranty that all such response action has been taken and that the requirements of CERCLA 42 U.S.C. Section 9620(h)(3)(C)(iii) have been satisfied.

G. INDEMNIFICATION REGARDING TRANSFEREES

The GRANTOR hereby recognizes its obligations under Section 330 of the National Defense Authorization Act of 1993 (Pub. L. 102-484), as amended, regarding indemnification of transferees of closing Department of Defense property.

H. NON-DISCRIMINATION.

GRANTEE covenants not to discriminate upon the basis of race, color, religion, disability, sex, age or national origin in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. 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 locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

III. THE CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS set forth in this deed, unless subsequently released, are a binding servitude on the Property; shall inure to the benefit of the GRANTOR and GRANTEE, their successors and assigns, and will be deemed to run with the land in perpetuity.

IV. LIST OF EXHIBITS: The following exhibits are attached hereto and made a part of this Quitclaim Deed:

A. Exhibit "A" Legal Descriptions and Plats of the Property.

B. Exhibit "B" CERCLA Hazardous Substance Notice pertaining to the Property

C. Exhibit "C" Draft State Covenant

D. Exhibit "D" Legal Descriptions and plats of Area 1 (IR Site 02), Area 2, and Area 3 (IR Site 04/06).

E. Exhibit "E" Legal Description and plat of portion of Area 1 (IR Site 02) to be used for residential purposes by Grantee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the GRANTOR has caused its name to be signed to these presents by an authorized Real Estate Contracting Officer on the day first above written.

UNITED STATES OF AMERICA,
acting by and through the Department of the Navy,

BY: _____
WILLIAM R. CARSILLO
Real Estate Contracting Officer

ACCEPTANCE:

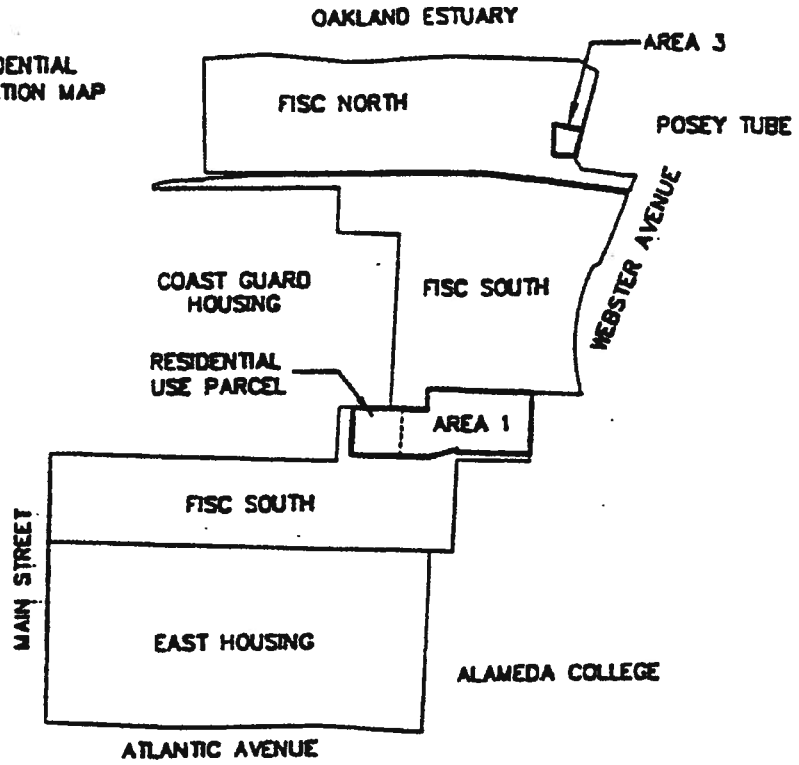
The GRANTEE hereby accepts this Deed and agrees to be bound by all the agreements, covenants, conditions, restrictions and reservations contained therein.

CITY OF ALAMEDA
A Municipal Corporation.

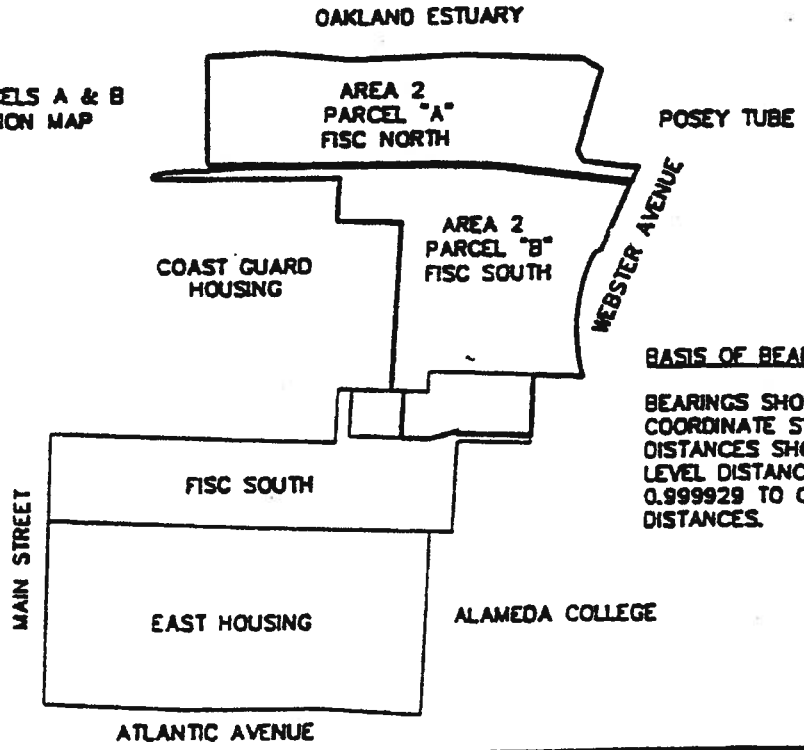
By: Jeffrey T. Bond
JEFFREY T. BOND
Development Manager

Date: 7/17/2000.

AREA 1, 3 AND RESIDENTIAL
USE PARCEL SITE LOCATION MAP



AREA 2, PARCELS A & B
SITE LOCATION MAP



BASIS OF BEARINGS:

BEARINGS SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM ZONE III 1927. DISTANCES SHOWN HEREON ARE GROUND LEVEL DISTANCES. MULTIPLY DISTANCES BY 0.999929 TO OBTAIN GRID LEVEL DISTANCES.

Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "D"
INDEX SHEET

Job No. 980221-50
By RG Date 05/12/00 Chkd. MP
SHEET 1 OF 18

PATH: J:\Sur98\980221\DWG\Plots\980221-50\
DWG NAME: ARFAINDX

DATE: 5/12/2000
TIME: 3:01 p.m.

mgm-DBN - 7/5/00

RECORDING REQUESTED BY
FIRST AMERICAN TITLE

2000215932
OFFICIAL RECORDS OF
ALAMEDA COUNTY
PATRICK O'CONNELL

07/20/2000 01:45 PM
RECORDING FEE: 0.00

32 PGS

RECORDING REQUESTED BY:
United States Navy
Naval Facilities Engineering Command
Southwest Division
1230 Columbia Street, Suite 1100
San Diego, California 92101
Attention: William R. Carsillo
Lead Real Estate Contracting Officer

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California Region
10151 Croydon Way, Suite 3
Sacramento, California 95827
Attention: Anthony J. Landis, P.E., Chief
Northern California Operations,
Office of Military Facilities
592733

DH
A91
32
TA

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

INTERIM COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Fleet and Industrial Supply Center - Alameda Annex)

This Covenant and Agreement ("Covenant") is made by and between the United States of America acting by and through the Department of the Navy ("DON" or "Covenantor"), the current owner of property situated in Alameda, County of Alameda, State of California, described in Exhibit A, which is attached and incorporated here by this reference ("Property"), and the State of California ("State") acting by and through the Department of Toxic Substances Control ("Department"). The Department has

determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health & Safety Code ("H&SC") Section 25260, and enters into this Covenant in accordance with H&SC Section 25355.5 and California Civil Code Section 1471(c). In addition, pursuant to Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Section 104 (42 U.S.C. §9604), as delegated to the Covenantor by Executive Order 12580, ratified by Congress in 10 U.S.C. Section 2701, et seq., and implemented by the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") 40 C.F.R. Part 300, and implementing guidance and policies, the Covenantor has also determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as the result of the presence on the land of hazardous substances as defined in CERCLA Section 101 (42 U.S.C. §9601).

The Covenantor and the Department (collectively, the "Parties") therefore intend that the use of the Property be restricted on an interim basis as set forth in this Covenant to protect human health, safety and the environment. It is anticipated that some or all of the Interim Restrictions in this Covenant may become unnecessary after adequate investigation or remediation of the Property.

The Covenantor currently has legal title and interest in the Property sufficient to enter into and record this Covenant to provide for continuing enforcement of the Interim Restrictions contained in this Covenant. This Covenant shall be enforceable against the servient estate in that it shall run with the land to all successors and assigns. Further, in any subsequent transfers or conveyances of the Property's title by the DON to non-

federal entities the DON shall insure that any such subsequent deed or transfer contains protective restrictions that are consistent with this Covenant and provide a right of access and power to conduct monitoring of waste retained on site.

ARTICLE I
STATEMENT OF FACTS

1.01 The Property, totaling approximately 106 acres, is more particularly described and depicted in Exhibit A. The Property is located in the area now generally bounded by the Oakland Inner Harbor, Mariner Square loop, the College of Alameda, Arnold Avenue, and the Coast Guard housing area of Alameda Naval Air Station, in the County of Alameda, State of California.

1.02 The DON and Department entered into the Federal Facility Site Remediation Agreement ("FFSRA") on May 9, 2000. Pursuant to the FFSRA, based on the RCRA Facility Assessment and other investigations, the Department and the DON have concluded that further investigation is needed to address contamination at Installation Restoration ("IR") Sites 02 and 04/06. The Department has concluded, and the DON has agreed, that an investigation of polynuclear aromatic hydrocarbon ("PAH") contamination will be conducted at the Property. This investigation will be conducted pursuant to a work plan submitted under the schedule in Attachment C of the FFSRA. This work plan shall specify the PAH screening level agreed to by the Department and the DON to be used to determine the need for additional investigation. If the determination is made, under the FFSRA, that a response action is necessary, the DON shall implement the response action pursuant to the FFSRA. The schedule for completing all remaining investigations, alternative analyses, remedy selection, and

remedy implementation for groundwater, marsh crust and IR Sites 02, 04/06, and other areas where further investigation for PAHs is necessary, will be set forth in Attachment C to the FFSRA.

1.03 The DON has issued a Finding of Suitability for Early Transfer ("FOSET") dated February 18, 2000, to transfer the Property prior to completion of the Remedial Investigation/Feasibility Study ("RI/FS") and a final assessment of the adequacy of any interim response action. This type of transfer is subject to Section 120(h)(3)(C) of CERCLA, and requires a determination by the Governor of the State that the Property is suitable for early transfer (FOSET). Specifically, Section 120(h)(3)(C)(i)(II) requires that the deed or other agreement governing the transfer contain assurances, among other things, that provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment.

1.04 The RI of the Property conducted by DON indicates that hazardous materials are present in soils in certain areas of the Property. Polychlorinated biphenyls ("PCBs") and cadmium are present in the eastern central area of the Property generally known as IR Site 02. The Department and the DON have determined that the PCB and cadmium concentrations in IR Site 02 may present a threat to human health or safety or the environment if they are not properly remediated and managed. PAHs also have been detected in fill soil in certain areas of the Property. The Department has determined that further investigation of PAHs is necessary to evaluate whether the PAHs that are in the fill pose a threat to present or future human health or safety or the environment at the Property. Elevated concentrations of petroleum and petroleum constituents are present in the soils in the area of IR Site 04/06. The Department and the DON have determined that

these petroleum concentrations may present a threat to human health or safety or the environment if they are not properly remediated and managed.

ARTICLE II
DEFINITIONS

2.01 Department. "Department" means the State of California by and through the Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. "Owner" means the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.03 Occupant. "Occupant" means any person or entity entitled by leasehold or other legal relationship to the right to occupy any portion of the Property.

2.04 Covenantor. "Covenantor" shall mean the United States acting through the DON.

ARTICLE III
GENERAL PROVISIONS

3.01 Interim Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Interim Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. These Interim Restrictions are to be construed to be consistent with the separate restrictions placed in the deed by and in favor of the Covenantor, conveying the Property from the Convenantor to its successor in interest. Each and every Interim Restriction: (a) runs with the land in perpetuity pursuant to H&SC Section 25355.5(a)(1)(C) and Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the

Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners and Occupants. Pursuant to H&SC Section [illegible].5(a)(1)(C) this Covenant binds all Owners and Occupants of the Property, their heirs, succes[illegible], and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code Section 1471(b), all successive o[illegible]ty are expressly bound hereby for the benefit of the Department.

3.0[illegible] [illegible]ification. Upon a determination that a hazardous substance is present upon or beneath nonresidential real property, a notification must be made pursu[illegible] [illegible]C Sect[illegible] [illegible]359.7. Specifically, prior to the sale or lease of nonresidential real property, the owner or lessor shall give the buyer or lessee notice that a hazardous substance is located on or beneath the Property.

3.04 Incorporation into Deeds and Leases. The Interim Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property to which they are in effect and applicable.

3.05 Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant alone, have authority to approve, disapprove, or otherwise affect a conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV
INTERIM RESTRICTIONS

4.01 Interim Restrictions. The following Interim Restrictions on use of the specified areas of the Property shall apply unless otherwise approved by the Department as provided below:

Area 1: Area 1 is that portion of the Property so designated in Exhibit A and generally known as IR Site 02. Area 1 shall not be used for residential purposes and construction activities shall not begin until the Department determines that the soils having PCB and cadmium concentrations have been properly remediated and the Department has recorded a release terminating these Interim Restrictions for Area 1 in accordance with Article VI of this Covenant.

Area 2: Area 2 is that portion of the Property so designated in Exhibit A. Area 2 shall not be used for residential purposes and construction activities shall not begin until the Department determines that PAH concentrations in soil do not pose an unacceptable risk to human health or safety or the environment or have been properly remediated to make the Area suitable for residential use and the Department has recorded a release terminating these Interim Restrictions for Area 2 in accordance with Article VI of this Covenant.

Area 3: Area 3, which is a sub-area of Area 2, is that portion of the Property so designated in Exhibit A, and known generally as IR Sites 04/06. Construction activities in these areas shall not begin until the Department determines that petroleum concentrations in soil do not pose an unacceptable risk to human health or safety or the environment or have been properly remediated and the Department has

recorded a release terminating these Interim Restrictions for Area 3 in accordance with Article VI of this Covenant.

As used in this paragraph 4.01, "construction activities" shall mean any below ground demolition work and any above ground or below ground construction of any permanent structure, including utility lines, that would conflict with the final soil remedy approved by the Department for the affected Area. Construction activities do not include above ground demolition work. Any person desiring to conduct any restricted construction activities, including subsurface utility demolition or construction, in the Areas described above prior to the release of any applicable Interim Restrictions by the Department in accordance with Article VI of this Covenant shall apply to the Department for approval to do so. The Department may require preparation and implementation of a risk management plan providing for proper management of any contaminated soil as a condition of granting its approval. Except as expressly provided in this paragraph 4.01, this Covenant does not restrict any use of the Property.

4.02 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department to protect the public health or safety or the environment.

ARTICLE V
ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with any of the Interim Restrictions specifically applicable to it shall be grounds for the Department to obtain injunctive relief prohibiting commencement of any construction activities

restricted by this Covenant. Actual or threatened violation of this Covenant, including but not limited to commencement or completion of any construction activities that violate this Covenant, may be prohibited or restrained, or the interest intended for protection by this Covenant may be enforced, by injunctive relief or any other remedy as provided by law. The court may award to the prevailing party in any action the costs of litigation, including reasonable attorney's fees.

ARTICLE VI
VARIANCE, TERMINATION AND RELEASE

6.01 Variance. The Owner, or with the Owner's consent, any Occupant, may apply to the Department for a written variance from the provisions of this Covenant. The Department will grant the variance only after finding that such a variance would be protective of human health, safety and the environment. Such application shall be made in accordance with H&SC Section 25233. The Department will grant the variance only after finding that such a variance would be protective of human health, safety and the environment.

6.02 Termination. The Owner, or with the Owner's consent, any Occupant, may apply to the Department for a termination of the Interim Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234. No termination of this Covenant shall extinguish or modify any restrictions, any DON right of access or any other assurances provided pursuant to CERCLA Section 120(h)(3) in any deed by which the DON conveys the Property.

6.03 Release. This Covenant shall continue in effect in perpetuity unless ended in accordance with the termination paragraph above, by law, or by the Department under this paragraph 6.03. Upon the Department making a determination that any or all of the Interim Restrictions on the use of the Property are no longer necessary to protect present or future human health or safety or the environment, the Department shall promptly record a release terminating this Covenant or the relevant Interim Restriction. In making such a determination, the Department shall make a finding that the hazardous materials that caused the land to be restricted have since been sufficiently investigated, removed or altered in a manner that allows the Department to determine there is no significant existing or potential hazard to present or future human health or safety or the environment.

ARTICLE VII
MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Recordation. The Covenantor shall record this Covenant, with Exhibit A, in the County of Alameda within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03 Notices. Whenever any person gives or serves any notice ("notice" as used here includes any demand or other communication with respect to this Covenant), each such notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being

served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: United States Navy
Naval Facilities Engineering Command
Southwest Division
1220 Pacific Highway
San Diego, CA 92120
Attention: Commanding Officer

To Department: Department of Toxic Substances Control
Northern California Region
10151 Croydon Way, Suite 3
Sacramento, CA 95827
Attention: Chief
Northern California Operations
Office of Military Facilities

To City: City Manager
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04 Partial Invalidity. If any portion of the Interim Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.05 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.06 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.07 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

UNITED STATES OF AMERICA,
acting by and through the Department of the Navy

By: _____
WILLIAM R. CARSILLO
Real Estate Contracting Officer

Date: 7/17/2000

STATE OF CALIFORNIA, acting by and through
the Department of Toxic Substances Control

By: _____
ANTHONY J. LANDIS
Chief, Northern California Operations
Office of Military Affairs

Date: 6-27-00

~~Approved as to form:~~

~~Date:~~ _____ ~~By:~~ _____

~~Approved as to form:~~

~~Date:~~ _____ ~~By:~~ _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA }ss
COUNTY OF Alameda }

On July 17, 2000, before me, P.D Campbell, a Notary Public in and for said State, personally appeared William R. Carsillo

, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.

Signature P.D. Campbell

P. D. CAMPBELL
Comm. # 1217922
NOTARY PUBLIC - CALIFORNIA
Alameda County
My Comm. Expires May 1, 2003

(This area for official notarial seal)

OPTIONAL:

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Date of Document

STATE OF CALIFORNIA)
)
COUNTY OF Sacramento)

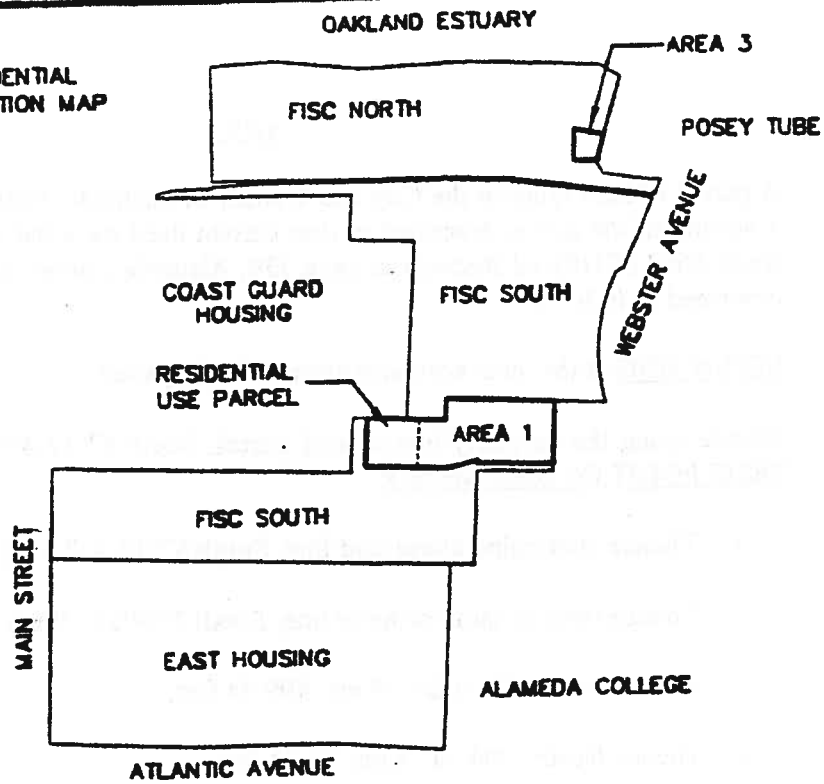
On this 27th day of June, in the year 2000, before me Toni Ione Malik, personally appeared Anthony J. Landis, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

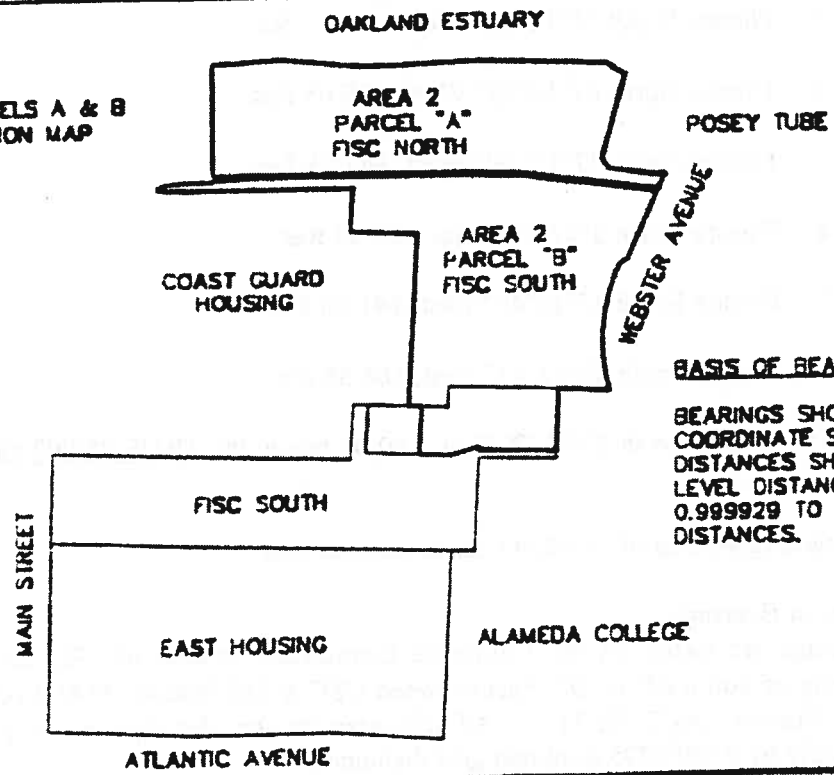
Signature Toni Ione Malik

BMP1 TONI IONE MALIK
COMM. #1121781
Notary Public-California
SACRAMENTO COUNTY
My Comm. Exp. Jan. 9, 2001 BMP1

AREA 1, 3 AND RESIDENTIAL USE PARCEL SITE LOCATION MAP



AREA 2, PARCELS A & B SITE LOCATION MAP



BASIS OF BEARINGS:

BEARINGS SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM ZONE III 1927. DISTANCES SHOWN HEREON ARE GROUND LEVEL DISTANCES. MULTIPLY DISTANCES BY 0.999929 TO OBTAIN GRID LEVEL DISTANCES.

Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "A"
INDEX SHEET

Job No. 980221-50
By RG Date 05/12/00 Chkd. MP
SHEET 1 OF 18

PATH: J:\Sur98\980221\DWG\Plots\980221-50\ DATE: 5/12/2000 TIME: 3:01 p.m. mgm-DBW - 7/5/00

AREA 1

A parcel of land lying in the City and County of Alameda, State of California, and being a portion of the parcel described in that certain deed recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, more particularly described as follows:

BEGINNING at the most northerly corner of said parcel:

Thence along the northerly line of said parcel, South 87°12'43" East, 141.82 feet to the TRUE POINT OF BEGINNING;

1. Thence continuing along said line, South 87°12'43" East, 713.87 feet;
2. Thence leaving said northerly line, South 2°04'31" West, 413.69 feet;
3. Thence North 87°55'29" West, 499.44 feet;
4. Thence North 2°04'31" East, 24.13 feet;
5. Thence South 75°18'52" West, 211.73 feet;
6. Thence North 87°12'43" West, 185.65 feet;
7. Thence North 87°12'43" West, 341.05 feet;
8. Thence North 2°47'17" East, 319.31 feet;
9. Thence South 87°12'43" East, 341.05 feet;
10. Thence South 87°12'43" East, 168.30 feet;
11. Thence North 2°47'17" East, 140.01 feet to the TRUE POINT OF BEGINNING;

Containing an area of 10.65543 acres, more or less.

Basis of Bearings:
Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS Station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

Billy Martin, P.L.S. 5797
Expires: 6/30/2004

LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

Dated: 6.30.00

Approved By:

Mike Mahoney, P.L.S. 5577
Expires: 12/31/2001

Dated: July 5 2000

K:\MAP\19981902\LEGALS\980221-50AREA1.doc

LICENSED LAND SURVEYOR
MICHAEL S. MAHONEY
NO. 5577
Exp. 12/31/01
SURVEYOR
STATE OF CALIFORNIA

NOTE: ACREAGE FOR AREA 1 SHOWN HERE
INCLUDES THE RESIDENTIAL USE P
2.5 ACRES.

1" = 200'

COAST GUARD HOUSING

PARCEL 1
7567 OR 117

P.O.B.
MOST NORTHERLY
CORNER OF 6618 OR 339

T.P.O.B.

5582 OR 597

NORTHERLY LINE OF 6618 OR 339

L1

S 87°12'43" E 713.87'

L2

L4

341.05'

S 87°12'43" E

AREA 1
10.65543 ACRES ±

S 02°04'31" W 413.69'

131

319.31'
N 02°47'17" E

RESIDENTIAL USE
PARCEL
2.5 ACRES±

319.31'
N 02°47'17" E

L3

N 87°55'29" W 499.44'

211.73'
S 75°18'52" W

341.05'
N 87°12'43" W

185.65'
N 87°12'43" W

6618 OR 339
CONDEMNATION SUIT NO. 30735

REEL 025 IMAGE 976

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 87°12'43" E	141.82'
L2	N 02°47'17" E	140.01'
L3	N 02°04'31" E	24.13'
L4	S 87°12'43" E	168.30'

LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "A"
AREA 1

Job No. 980221-50
By RCS Date 05/10/00 Chkd. MP
SHEET 4 OF 18

PATH: J:\Sur98\980221\DWG\Plots\980221-50\ DATE: 5/11/2000 Mom - DAW - 1/5/00

AREA 2

Parcel A:
A parcel of land lying in the City and County of Alameda, State of California, and being a portion of Parcel 1 and Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records and a portion of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records more particularly described as follows:

BEGINNING at the most northwesterly corner of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records:

1. Thence along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North 86°38'46" East, 16.02 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504, Official Records Alameda County, being the TRUE POINT OF BEGINNING;

2. Thence continuing along the northerly line of said parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North 86°38'46" East, 402.97 feet;

3. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South 84°06'14" East, 567.60 feet;

4. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North 87°53'46" East, 726.00 feet;

5. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South 87°21'14" East, 858.00 feet;

6. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South 58°36'14" East, 153.54 feet to the most northwesterly corner of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records;

7. Thence leaving said northerly line and along the westerly line of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records, South 15°28'16" West, 579.96 feet to the most northwesterly corner of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35;

8. Thence leaving said westerly line and along the northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South 31°40'14" East, 82.16 feet;

9. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South 81°24'14" East, 285.99 feet;

10. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South 88°00'44" East, 87.24 feet to the most northwesterly corner of Parcel B described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South 65°48'44" East;

11. Thence leaving said northerly line and along the westerly line of Parcel B described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, along said curve having a radius of 30050.01 feet, through a central angle of 0°12'27", for an arc length of

108.83 feet to a point on the southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South 13°02'54" West;

12. Thence leaving said westerly line along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 741.84 feet, through a central angle of 1°33'38", for an arc length of 20.21 feet to a point of compound curvature;

13. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 980.54 feet, through a central angle of 1°47'59", for an arc length of 30.80 feet to a point of compound curvature;

14. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 1457.97 feet, through a central angle of 1°12'01", for an arc length of 30.54 feet to the beginning of a non-tangent curve to the left from which point a radial line bears South 08°27'44" West;

15. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 2890.33 feet, through a central angle of 0°36'00", for an arc length of 30.27 feet;

16. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, North 82°06'43" West, 848.13 feet to a point on the southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records;

17. Thence leaving said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, and along said southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records, North 88°07'13" West, 422.49 feet to the

most southeasterly corner of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;

18. Thence along said southerly of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, North 89°46'04" West, 1515.46 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County;

19. Thence along said easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County, North 0°30'14" West, 746.23 feet to the TRUE POINT OF BEGINNING;

Containing an area of 45.45148 acres, more or less.

Parcel B:

A parcel of land lying in the City and County of Alameda, State of California, and being a portion of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, and being a portion of Parcel 1 described in that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on July 21, 1944 in Book 4499 of Official Records at page 401, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on June 29, 1944 in Book 4499 of Official Records at page 384, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on June 29, 1944 in Book 4499 of Official Records at page 316, Alameda County Records, and being a portion of Parcel 1 described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, and being a portion of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, and all of Parcel 2 described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 712, Alameda County Records, and all of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, and all of the parcel described in that certain deed recorded on September 16, 1959 in Book 9152 of Official Records at page 57, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the northerly line of Atlantic Avenue, being 51 feet wide, and the easterly line of Main Street as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Maps at page 16 through 22, inclusive, in the Office of the Recorder of Alameda County:

1. Thence along said easterly line of Main Street and the westerly boundary line of the Parcel described in that certain deed recorded on March 28, 1941 in Book 4023 of Official Records at page 499, Alameda County Records, North 00°34'11" East, 1240.19 feet to the southerly line of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records;

2. Thence continuing along said easterly line of Main Street, North 00°34'11" East, 596.74 feet;

3. Thence leaving said easterly line of Main Street, South 87°57'28" East, 1923.89 feet;

4. Thence North 2°47'17" East, 364.75 feet to the southerly line of Parcel 1 described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records;

5. Thence along said southerly line of said Parcel 1 as described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, South 87°12'43" East, 351.25 feet to the TRUE POINT OF BEGINNING;

6. Thence leaving said southerly line, North 2°47'17" East, 1161.09 feet;

7. Thence North 87°21'26" West, 426.49 feet to a point on the easterly line of the parcel described in that certain deed recorded on August 10, 1966 in Book 1821 of Official Records at page 494, Alameda County Records;

8. Thence along said easterly line of the parcel described in that certain deed recorded on August 10, 1966 in Book 1821 of Official Records at page 494,

Alameda County Records, North 02°47'17" East, 293.60 feet to the northeasterly corner of said parcel;

9. Thence along the northerly line of said parcel described in that certain deed recorded on August 10, 1966 in Book 1821 of Official Records at page 494, Alameda County Records, North 89°46'04" West, 1180.27 feet;

10. Thence continuing along the northerly line of said parcel described in that certain deed recorded August 10, 1966 in Book 1821 of Official Records at page 494, Alameda County Records, South 76°59'47" West, 30.74 feet;

11. Thence continuing along the northerly line of said parcel described in that certain deed recorded on August 10, 1966 in Book 1821 of Official Records at page 494, Alameda County Records, North 00°30'07" West, 15.37 feet;

12. Thence continuing along the northerly line of said parcel described in that certain deed recorded August 10, 1966 in Book 1821 of Official Records at page 494, Alameda County Records, South 76°59'47" West, 51.25 feet to a point on the easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County;

13. Thence along said easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County, North 00°30'13" West, 28.00 to the most northwesterly corner of Parcel 2 described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 712, Alameda County Records, being a point on a non-tangent curve to the right from which point a radial line bears South 17°36'08" East;

14. Thence leaving said easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County, and along the northerly line of Parcel 2 described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 712, Alameda County Records, along said curve having a radius of 955.37 feet, through a central angle of 1°14'55", for an arc length of 20.82 feet to a point of compound curvature;

15. Thence continuing along said northerly line of Parcel 2 described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 712,

Alameda County Records, along said curve having a radius of 557.56 feet, through a central angle of 15°51'00", for an arc length of 154.24 feet;

16. Thence continuing along said northerly line of Parcel 2 described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 712, Alameda County Records, North 89°29'47" East, 183.18 feet to a point on the westerly line of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records;

17. Thence along said westerly line of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, North 00°42'53" West, 10.00 feet to the northwesterly corner of said parcel;

18. Thence continuing along the northerly line of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, North 87°10'47" East, 238.51 feet to the beginning of a tangent curve to the right;

19. Thence continuing along said northerly line of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, along said curve having a radius of 1136.01 feet, through a central angle of 3°03'09", for an arc length of 60.52 feet;

20. Thence continuing along said northerly line of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, South 89°46'04" East, 1216.24 feet;

21. Thence continuing along said northerly line of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, South 88°07'13" East, 367.67 feet to the beginning of a tangent of curve to the right;

22. Thence continuing along said northerly line of the parcel described in that certain deed recorded June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, along said curve having a radius of 563.14 feet, through a central angle of 6°00'30", for an arc length of 59.05 feet;

23. Thence continuing along said northerly line of the parcel described in that certain deed recorded on June 20, 1956 in Book 2084 of Official Records at page 707, Alameda County Records, South 82°06'43" East, 335.29 feet to a point on the northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;

24. Thence along said northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, South 82°06'43" East, 505.98 feet to the beginning of a tangent curve to the right;

25. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 2867.82 feet, through a central angle of 00°36'00", for an arc length of 30.03 feet to the point of a compound curvature;

26. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, curve having a radius of 1435.47 feet, through a central angle of 1°12'01", for an arc length of 30.07 feet to the point of a compound curvature;

27. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 958.04 feet, through a central angle of 1°47'59", for an arc length of 30.09 feet to the point of a compound curvature;

28. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 719.34 feet, through a central angle of 1°12'56", for an arc length of 15.26 feet to the most northerly corner of Parcel A described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South 66°03'48" East;

29. Thence along the westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda

County Records, along said curve having a radius of 30,050.01 feet, through a central angle of 00°56'00", for an arc length of 489.48 feet to the beginning of a non-tangent curve to the left, from which point a radial line bears South 2°09'25" East;

30. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, along said curve having a radius of 60.00 feet, through a central angle of 63°17'05", for an arc length of 66.28 feet to a point of compound curvature;

31. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, along said curve having a radius of 1222.09 feet, through a central angle of 31°53'47", for an arc length of 680.33 feet to a point of compound curvature;

32. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, along said curve having a radius of 1434.10 feet, through a central angle of 07°09'19", for an arc length of 179.09 feet to a point on the southerly line of that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records;

33. Thence along said southerly line of the parcel described in that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records, North 87°12'43" West, 332.59 feet to the northwesterly corner of that certain Parcel Map recorded on October 2, 1981 in Book 131 of Maps at page 1 through 2, inclusively, Alameda County Records;

34. Thence along the westerly line of that certain Parcel Map recorded on October 2, 1981 in Book 131 of Maps at page 1 through 2, inclusively, Alameda County Records, South 2°04'31" West, 413.69 feet;

35. Thence North 87°55'29" West, 499.44 feet;

36. Thence North 2°04'31" East, 24.13 feet;

37. Thence South 75°18'52" West, 211.73 feet;

38. Thence North 87°12'43" West, 185.65 feet;

39. Thence North 2°47'17" East, 319.31 feet a point on the northerly line of the parcel described in that certain Condemnation Suite No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records;

40. Thence along said northerly line of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, North 87°12'43" West, 83.75 feet to the TRUE POINT OF BEGINNING;

Containing an area of 57.81722 acres, more or less.

Basis of Bearings:
Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS Station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

Billy Martin, P.L.S. 5797
Expires: 6/30/2004

Dated: 6-30-00

Approved By:

LICENSED LAND SURVEYOR
MICHAEL S. MAHONEY
NO. 5577
Exp. 12/31/01
SURVEYOR
STATE OF CALIFORNIA

Mike Mahoney, P.L.S. 5577
Expires: 12/31/2001

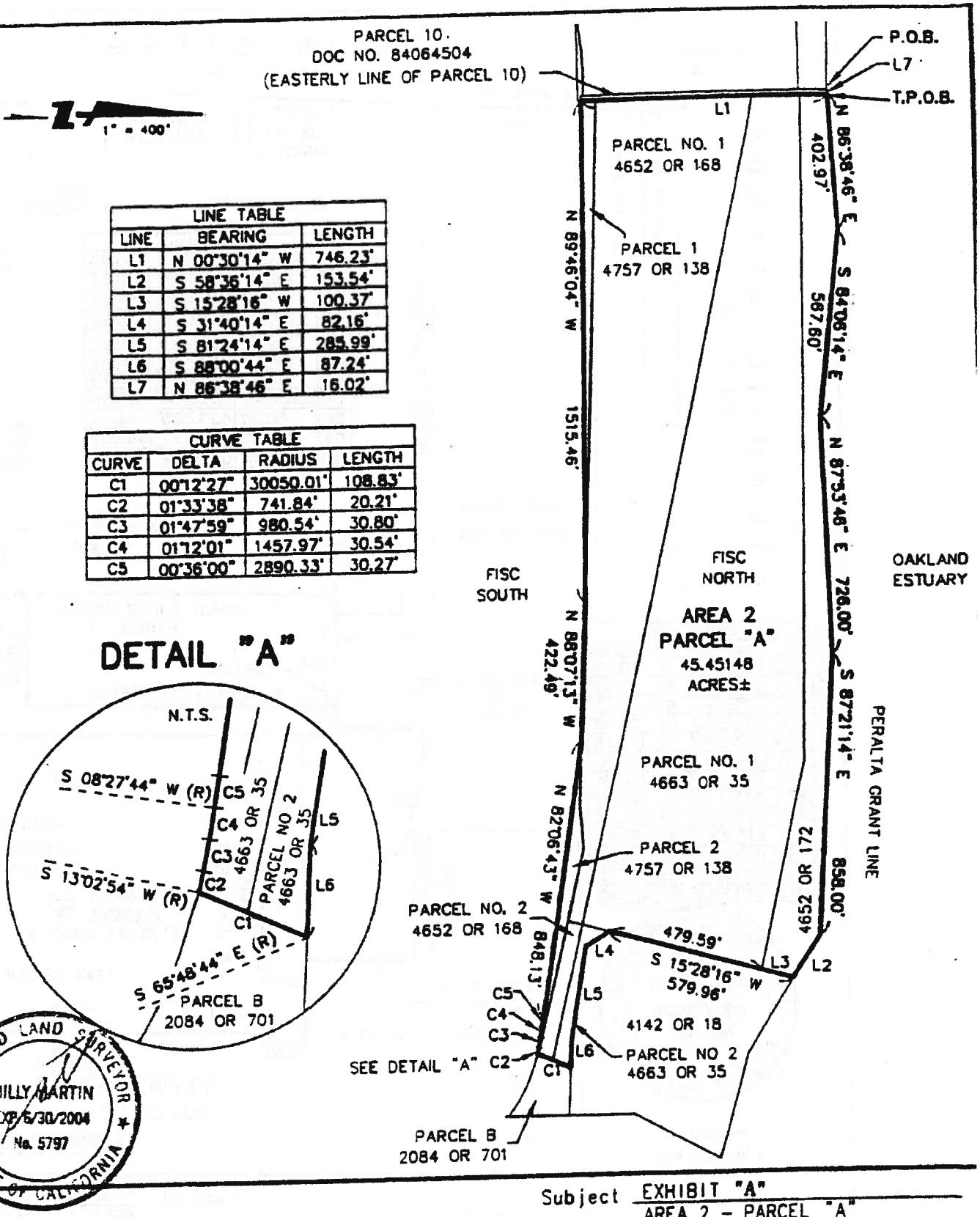
Dated: July 5, 2000

K:\MAIN\1998\980221\LEGALS\980221-50AREA2.doc

1" = 400'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 00°30'14" W	746.23'
L2	S 58°36'14" E	153.54'
L3	S 15°28'16" W	100.37'
L4	S 31°40'14" E	82.16'
L5	S 81°24'14" E	285.99'
L6	S 88°00'44" E	87.24'
L7	N 86°38'46" E	16.02'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	00°12'27"	30050.01'	108.83'
C2	01°33'38"	741.84'	20.21'
C3	01°47'59"	980.54'	30.80'
C4	01°12'01"	1457.97'	30.54'
C5	00°36'00"	2890.33'	30.27'



LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

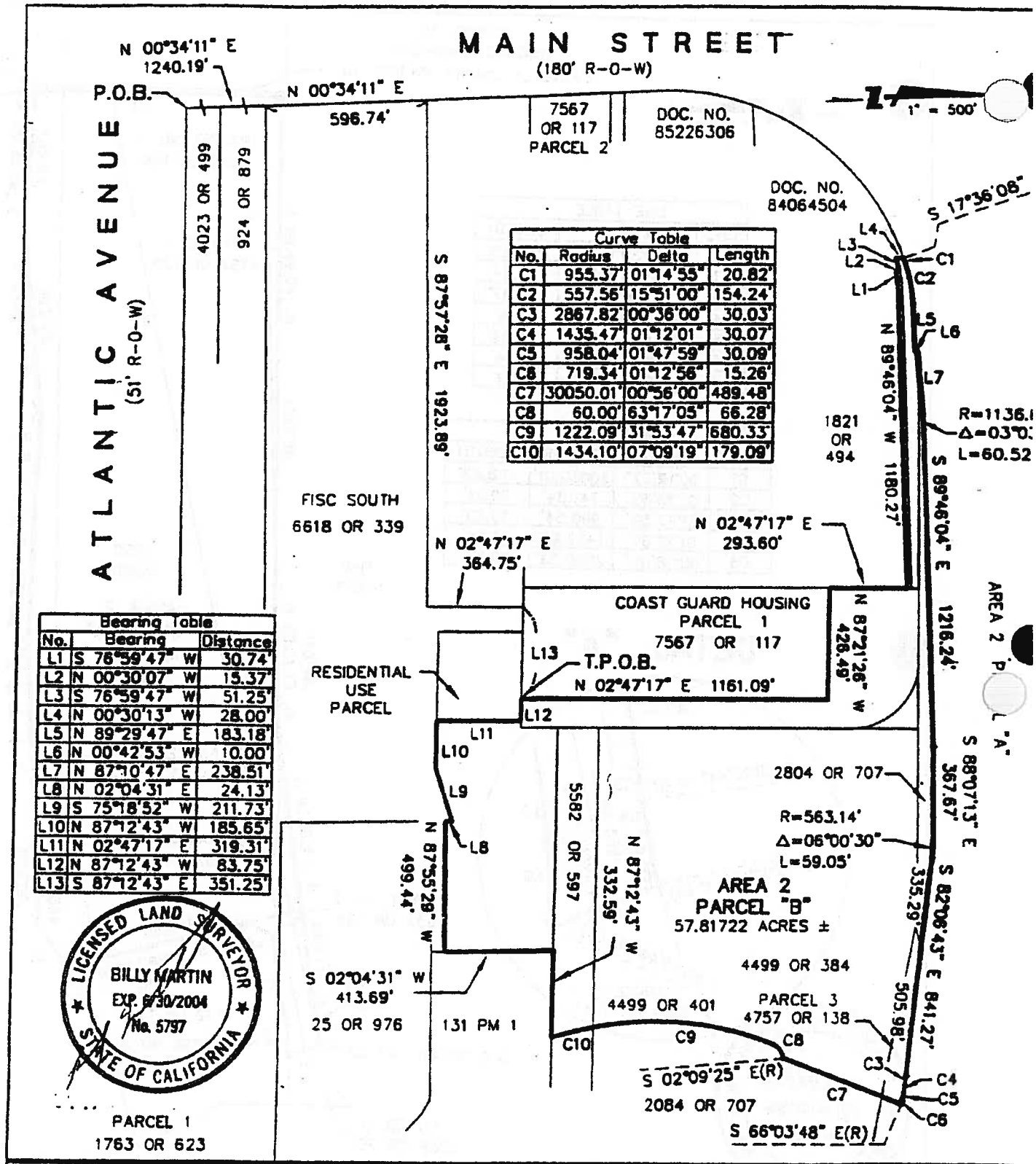
Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "A"
AREA 2 - PARCEL "A"
Job No. 980221-50
By RCS Date 05/12/00 Chkd. MP
SHEET 15 OF 18

PATH: J:\Sur98\980221\DWG\Plots\980221-50\
DWG NAME: SFISCA2A
DATE: 5/12/2000
TIME: 9:08 a.m.

MBM-DAH 7/5/00



Bearing Table		
No.	Bearing	Distance
L1	S 76°59'47" W	30.74'
L2	N 00°30'07" W	15.37'
L3	S 76°59'47" W	51.25'
L4	N 00°30'13" W	28.00'
L5	N 89°29'47" E	183.18'
L6	N 00°42'53" W	10.00'
L7	N 87°10'47" E	238.51'
L8	N 02°04'31" E	24.13'
L9	S 75°18'52" W	211.73'
L10	N 87°12'43" W	185.65'
L11	N 02°47'17" E	319.31'
L12	N 87°12'43" W	83.75'
L13	S 87°12'43" E	351.25'

Curve Table			
No.	Radius	Delta	Length
C1	955.37'	01°14'55"	20.82'
C2	557.56'	15°51'00"	154.24'
C3	2867.82'	00°36'00"	30.03'
C4	1435.47'	01°12'01"	30.07'
C5	958.04'	01°47'59"	30.09'
C6	719.34'	01°12'56"	15.26'
C7	30050.01'	00°56'00"	489.48'
C8	60.00'	63°17'05"	66.28'
C9	1222.09'	31°53'47"	680.33'
C10	1434.10'	07°09'19"	179.09'

Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "A"
AREA 2 - PARCEL "B"
Job No. 980221-50
By RCS Date 5/12/00 Chkd. MP
SHEET 16 OF 18

PATH: J:\SUR98\980221\DWG\Plots\980221-50\
DWG NAME: SFISCA2B
DATE: 5/12/2000
TIME: 2:46 p.m.

mem - DDN 7/5/00

AREA 3

A parcel of land lying in the City and County of Alameda, State of California, and being a portion of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, more particularly described as follows:

BEGINNING at the most southeasterly corner of said Parcel 1:

Thence along the easterly line of said parcel, North 15°28'16" East, 103.74 feet to the TRUE POINT OF BEGINNING;

1. Thence leaving said line North 89°40'23" West, 147.30 feet;
2. Thence North 0°19'37" East, 204.21 feet;
3. Thence South 77°04'25" East, 195.73 feet to a point on said easterly line;
4. Thence along said easterly line, South 15°28'16" West, 167.32 feet to the TRUE POINT OF BEGINNING;

Containing an area of 31,398 square feet, more or less.

Basis of Bearings:
Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS Station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

Billy Martin, P.L.S. 5797
Expires: 6/30/2004

LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

Dated: 6-30-00

Approved By:

Mike Mahoney, P.L.S. 5577
Expires: 12/31/2001
K:\MAIN\19980721\LEGALS\AREA3.DOC

LICENSED LAND SURVEYOR
MICHAEL S. MAHONEY
NO. 5577
Exp. 12/31/01
SURVEYOR
STATE OF CALIFORNIA

Dated: July 5, 2000

Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT : "A"
AREA 3
Job No. 980221-50
By RCS Date 05/12/00 Chkd. MP
SHEET 18 OF 18

PATH: J:\Sur98\980221\DWG\Plats\980221-50\

DATE: 5/12/2000
TIME: 8:37 a.m.

MGM - DON 7/5/00

Terry Tamminen
Agency Secretary
Cal/EPA

Department of Toxic Substances Control

Edwin F. Lowry, Director
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

February 27, 2004

Mr. Thomas Macchiarella
BRAC Environmental Coordinator
Southwest Division
Naval Facilities Engineering Command
BRAC Office
1230 Columbia Street, Suite 1100
San Diego, California 92101-8517

FINAL CLOSEOUT REPORT, REMOVAL OF CONTAMINATED SURFACE SOIL AT INSTALLATION RESTORATION SITE 02 (IR02), FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX (FISCA), Alameda, California

Dear Mr. Macchiarella:

The Department of Toxic Substances Control (DTSC) has received the Final Closeout Report dated December 26, 2001 for IR02 located at the former FISCA site. DTSC has also received the Radiological Characterization/Final Status Survey and Sampling Project (Radiological Survey) dated August 27, 2003 for IR02. DTSC has reviewed the Closeout Report in conjunction with the Radiological Survey, and is ready to make a decision on the Closeout Report.

IR02 occupies approximately 10.65 acres in the south-central portion of FISCA. Previous investigations reveal that the top few inches of soil contained polychlorinated biphenyl (PCB) and cadmium at concentrations high enough to cause unacceptable risk to human health. On June 25, 2001, DTSC approved a Remedial Action Plan/Record of Decision (RAP/ROD) for IR02. The RAP/ROD requires excavation of surface soil at IR02 contaminated with PCB and cadmium. DTSC approved the remedial design, workplans, and workplan addendum on June 26, 2001 and August 27, 2001. The Navy completed the removal activity in the winter of 2001, and submitted draft and final closeout reports.

Upon further assessment of the past operation at IR02, DTSC identified evidence suggesting that radioactive materials were stored in the center of IR02. Prior

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investigation efforts were not sufficient to determine whether radioactive materials were released to the environment. The Navy conducted further soil sampling and survey at IR02 in December 2002, and determined that the residual radioactivity is less than the release criteria and is similar to the background level. The California Department of Health Services reviewed the Radiological Survey, and on November 13, 2003 concluded that, with respect to radiological issues, IR02 is acceptable for unrestricted release.

DTSC has reviewed the Closeout Report and concurs that the Navy has remediated the soil contamination at IR02 pursuant to the RAP/ROD for IR02 surface soil. All confirmation samples collected after the final excavation show PCB and cadmium concentrations less than the cleanup levels. DTSC hereby determines that the soil remediation at IR02 is complete.

No further physical action is necessary to remediate PCB and cadmium in the soil at IR02. Final decision on residential use in the western one-third of IR02 will depend on the results of the ongoing groundwater investigation, and adequate remediation of the benzene plume. If the foregoing allow DTSC to conclude that residential use is appropriate, DTSC will record a release of the existing land use restriction.

If you have any question, please call me at (510) 540-3772.

Sincerely,

Daniel E. Murphy, P.E.
Unit Chief, Northern California Operations
Office of Military Facilities

cc: Mr. Lou Ocampo
Remedial Project Manger
Southwest Division
Naval Facilities Engineering Command
BRAC Office
1230 Columbia Street, Suite 1100
San Diego, California 92101-8517

Ms. Judy Huang
Remedial Project Manger
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Ms. Debbie Potter
Alameda Reuse and Redevelopment Authority
950 West Mall Square
Alameda, California 94501

Mr. Peter Russell
Northgate Environmental Management, Inc.
950 Northgate Drive, Suite 313
San Rafael, California 94903

Mr. Mike Quillin
ERM, Inc.
1777 Botelho Drive, Suite 260
Walnut Creek, California 94596

BRAC OFFICE
2004 FEB 30 P 3: 21

[illegible]
2/3/04

ATTACHMENT I

RESPONSES TO REVIEW COMMENTS

DRAFT AND DRAFT FINAL

STATUTORY FIVE-YEAR REVIEW REPORT

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

RESPONSES TO REVIEW COMMENTS

Dated October and November 2005

Received from:

DTSC

USEPA

City of Alameda

On

DRAFT

STATUTORY FIVE-YEAR REVIEW REPORT

Dated August 2005

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
INSTALLATION RESTORATION (IR) SITE 02 at
Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex; and for
MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Final Comments dated October 27, 2005; Received October 27, 2005; Navy Response date: January 18, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
	General Comments	
1	*Decision Documents: Please specify that the IR02 Five-Year Review Report evaluates the remedies as selected in the IR02 Remedial Action Plan/Record of Decision (RAP/ROD) which was approved by DTSC on June 26, 2001. Similarly, please specify that the Marsh Crust Five-Year Review Report evaluates the remedies as selected in the Marsh Crust RAP/ROD which was approved by DTSC on February 2, 2001. Please include this information prominently in the first paragraph of the executive summaries, introductory sections, fact sheet, and the newspaper public notice.* *When referencing the decision document for either IR02 or the marsh crust, please refer the decision document accurately as the "RAP/ROD" instead of "ROD."*	***Statements as suggested in this comment will be added to the executive summaries and introductory sections of both five-year review reports, the fact sheet and the public notice. The reference to the decision document will be 'RAP/ROD'.***
2	*Site Name: The Five-Year Review Reports, fact sheet, newspaper public notice, and transmittal letter use various names, acronyms, and abbreviations for the subject site. DTSC continues to discourage such inconsistent site identification, and requests the Navy to use a single site name and abbreviation for the site. The accurate site name is the "Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex." The acceptable abbreviation for this site is "FISCA."*	***The site name suggested in this comment will be used in the five-year review documents.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
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MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Final Comments dated October 27, 2005; Received October 27, 2005; Navy Response date: January 18, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
3	*The Navy's Five-Year Review Policy: The reports state that the Navy and Marine Corps policy dated May 21, 2004 was used in conducting the review. DTSC was able to obtain the Navy's November 29, 2001 policy but not the revised May 21, 2004 policy. Please provide DTSC the revised policy.*	***The Navy will transmit a copy of the May 21, 2004 version of the Navy/Marine Corps Five-Year Review Policy to the DTSC under separate cover.***
4	*Interim Covenant: DTSC and the Navy executed the "Interim Covenant to Restrict Use of Property, Environmental Restriction" (Interim Covenant) on July 17, 2000 and recorded the Interim Covenant with the Alameda County Assessor's Office on July 20, 2000. Section 4.01 of the Interim Covenant states that Area 1 (i.e., 10.65543 acres of IR02) shall not be used for residential purposes and construction activities shall not begin until DTSC determines that the soils having PCB and cadmium concentrations have been properly remediated and DTSC has recorded a release terminating these Interim Restrictions for Area 1.* *On February 27, 2004, DTSC issued a letter stating that no further physical action is necessary to remediate PCB and cadmium in the soil at IR02. The letter also indicates that final decision on residential use in the western one-third of IR02 would depend on the results of the ongoing groundwater investigation, and adequate remediation of the benzene plume. The letter concludes that DTSC would record a release of the existing land use restriction if residential land use at the western one-third of IR02 is appropriate.* *Because the benzene/naphthalene plume is located at IR02 and adjacent areas, DTSC has not released the Interim Covenant to allow residential land use. The land use restrictions in all IR02 areas remain effective. Please revise the IR02 Five-Year Review Report, fact sheet, newspaper public notice, and various summary forms/documents to present accurate land use restrictions pursuant to the Interim Covenant.*	***The five-year review for Site IR02 evaluated whether the shallow soil remedy implemented at this site remained protective of human health and the environment at Site IR02 as intended by the decision documents (RAP/ROD). In this case, the selected remedy was to remove soils containing PCBs and cadmium at concentrations exceeding cleanup levels in the shallow soils of this site. The documents reviewed for this five-year review contain data and information as well as regulatory acceptance that this specific remedy has been implemented as intended. In its letter to the Navy dated February 27, 2004, DTSC has stated that 'All confirmation samples collected after the final excavation show PCB and cadmium concentrations less than the cleanup levels. DTSC hereby determines that the soil remediation at IR02 is complete. No further physical action is necessary to remediate PCB and cadmium in the soil at IR02'.*** ***Please note that this five-year review for Site IR02 did not include evaluations of environmental issues other than shallow soils contaminated with PCBs and cadmium, and remediation of these soils as intended in decision documents.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
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ALAMEDA, CALIFORNIA

Final Comments dated October 27, 2005; Received October 27, 2005; Navy Response date: January 18, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
5	*Further Statutory Five-Year Reviews: The Navy plans to prepare the Land Use Control Remedial Design to recommend whether future five-year reviews would be necessary for either IR02 or the marsh crust and former subtidal area. Please note that statutory five-year reviews at a site can only be terminated when all hazardous substances, pollutants, or contaminants have been removed or remediated and the residual chemical concentrations are at levels suitable for unrestricted use.* *It appears that statutory five-year reviews for the marsh crust and the eastern two-third of IR02 would continue into perpetuity, unless additional remediation is implemented to render the site suitable for unrestricted use. For the western one-third of IR02, statutory five-year review may be terminated as soon as the groundwater contamination no longer poses a threat to human health and the environment.*	***Comment noted.***
6	*Base Closure Dates: Please provide the actual base closure dates for FISCA and the Alameda Naval Air Station, instead of just the months and years.*	***The following base closure dates will be added to the five-year review reports:*** ***FISCA: September 30, 1998*** ***Alameda NAS: April 30, 1997***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
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ALAMEDA, CALIFORNIA

Final Comments dated October 27, 2005; Received October 27, 2005; Navy Response date: January 18, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
7	*Applicable or Relevant and Appropriate Requirements (ARARs): DTSC has adopted regulations to establish a clear and consistent standard for remedies where hazardous wastes or constituents, or hazardous substances are left in place at levels not suitable for unrestricted use of the land. DTSC's Land Use Covenants Regulations, effective April 19, 2003, have added section 67391.1 to title 22, division 4.5, chapter 39, California Code of Regulations (CCR). The Land Use Covenants Regulations are ARARs. Please revise both Five-Year Review Reports to document the new ARARs.*	***Cal. Code Regs. (CCR) title 22, §67391.1 regulations referred to in the comment were reviewed and evaluated for potential ARAR status. They were promulgated after the issuance of the two RAP/RODs addressed in the draft five-year review report and were based upon statutory authorities set forth in the California Health and Safety Code and Civil Code (Section 1471). The substantive provisions of those statutory authorities were identified as State ARARs in the two RAP/RODs addressed in the five-year review report and also provided the legal basis for the deed restrictions and Land Use Covenants entered into with DTSC at FISCA and the East Housing Parcel in 2000.*** ***The NCP at 40 CFR Section 300.430lf)(1)(ii)(B)(1) provides that requirements (ARARs) that are promulgated <u>after ROD signature</u> must be attained or waived only when determined to be applicable or relevant and appropriate <u>and necessary to ensure that the remedy is protective of human health and the environment</u>. Although it does not appear that these post-ROD regulations include any "new" substantive requirements that are necessary to protect human health and the environment and that were not already covered by the underlying statutory ARARs identified as described above, the Navy is nonetheless willing to agree to accept the substantive provisions of the regulations as "relevant and appropriate" State ARARs. The text of Section 67391.1 is appended to these responses for reference.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
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MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Final Comments dated October 27, 2005; Received October 27, 2005; Navy Response date: January 18, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
8	*Implementation and Enforcement Plan: Since the requirements of 22 CCR 67391.1 are ARARs, DTSC requires an Implementation and Enforcement Plan, instead of a Land Use Control Remedial Design, for the Marsh Crust Covenant. DTSC will require an Implementation and Enforcement Plan when DTSC selects the institutional controls remedy in the Basewide RAP/ROD. Hence, a Land Use Control Remedial Design for IR02 is not necessary. DTSC also requires the Navy or other responsible parties to establish financial mechanism to fund DTSC's long-term costs associated with the administration of the Implementation and Enforcement Plan.*	***The Navy will prepare and submit a Land Use Control Remedial Design (LUC RD) report as provided in the "Navy Principles" cited below. That document is the equivalent of the "Implementation and Enforcement Plan" and will address substantive requirements of Cal. Code Regs. title 22, §67391.1 as ARARs. DTSC has accepted this approach in recent MCAS El Toro and MCAS Tustin RODs.*** ***The Navy acknowledges that Subsection 67391.1(h) of the regulations provides: "The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls." The Navy does not agree that the provisions of this subsection are substantive ARARs.*** **"Principles and Procedures for Specifying, Monitoring, and Enforcement of Land-Use Controls and Other Post-ROD Actions".**
9	*Technical Assessment Question C: The IR02 Five-Year Review Report asks whether any other information has come to light that could call into question the protectiveness of the remedy. The report's response is negative, but DTSC disagrees. The discovery and confirmation of the benzene/naphthalene plume at IR02 and adjacent areas have prompted the Navy to propose remedial action for such groundwater contamination. One of the proposed treatment zones is adjacent to the western one-third of IR02 and the second proposed treatment zone is located at the eastern two-third of IR02. Consequently, DTSC is unable to release the Interim Covenant to allow unrestricted land use at the western one-third of IR02 until the groundwater contamination no longer poses a threat to human health and the environment. Please revise the IR02 Five-Year Review Report to document DTSC's position.*	***The remedy implemented pursuant to the RAP/ROD for Site IR02 – removal of shallow soils containing PCBs and cadmium exceeding cleanup levels – was the subject of this five-year review of Site IR02. The five-year review focused on the specific scope of the RAP/ROD and did not address the broader question of whether or not additional remediation may be required to address hazardous substances outside of the scope of the RAP/ROD and remedial action. All documents and data reviewed has supported the finding that this remedy has been implemented as intended by decision documents and it is currently performing as intended, and has been accepted as complete by the DTSC in its letter dated February 17, 2004 (please refer to response to Comment #4 above).***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
10	*Marsh Crust Covenant: DTSC and the City of Alameda executed the "Covenant to Restrict Use of Property, Environmental Restrictions" (Marsh Crust Covenant) on July 14, 2000 and recorded the Marsh Crust Covenant with the Alameda County Assessor's Office on July 20, 2000. Section 3.1 of the Marsh Crust Covenant prohibits excavation below the threshold depth without a City of Alameda excavation permit. Section 2.3 of the Marsh Crust Covenant requires that the restrictions be incorporated by reference in each and all deeds, leases and subleases of any portion of the property, which include all areas of FISCA and the former Alameda Naval Air Station East House Area.* *The former East Housing Area is currently being constructed as the Bayport residential development. One of the five-year review activities should examine whether an individual Bayport home deed contains the marsh crust restrictions, notifications, and/or appropriate references. The Marsh Crust Five-Year Review Report should evaluate the effectiveness and of such requirement. DTSC requests the Marsh Crust Five-Year Review Report include an executed deed of a Bayport home to illustrate compliance.*	***Navy agrees that a copy of a Bayport home deed containing marsh crust restrictions would be an effective means of illustrating compliance. As such, Navy is securing a copy of homeowner deed of trust at the Bayport Development formerly known as the East Housing Area. Based on our conversation with the developer of Bayport, environmental disclosures are attached to the deed including the restrictions on the marsh crust. A copy of the deed and restrictions attached to it will be included in the next submittal of this five-year review report.***
11	*Technical Assessment Question B: The Marsh Crust Five-Year Review Report asks whether the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of remedy selection still valid. The report's response is affirmative, but DTSC disagrees. On April 19, 2002, the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment listed naphthalene as a chemical known to the State of California to cause cancer, and later adopted a unit risk value of 3.4E-5 ($\mu g/m^3$)-1 and a slope factor of 1.2E-1 (mg/kg-day)-1 for naphthalene. The Marsh Crust Five-Year Review Report should conclude that residual naphthalene concentrations at FISCA and the former East Housing Area would impact the effectiveness of the Marsh Crust Covenant until further studies show otherwise.*	***Naphthalene is not a factor in the calculation of B(a)PE values. The threshold depths were derived based on depths to the marsh crust and not on B(a)PE values.***

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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
11 ***(continued)***	*With naphthalene's new slope factor and unit risk, all benzo(a)pyrene equivalent values previously computed at all FISCA and former East Housing Area locations must be recalculated. DTSC specifically requests the Navy to determine whether such recalculated benzo(a)pyrene equivalent values would alter the threshold depths.*	

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Number	Comment	Response
12	*Threshold Depths: The figure attached with the City of Alameda's Ordinance Number 2824 shows the threshold depths (in feet below ground surface) beyond which an excavation permit is required. The figure identifies areas with threshold depths of 15, 10, and 5 feet below ground surface. The figure also depicts areas where a permit would apply for excavation deeper than the mean higher high tide. Most of the Bayport homes are located in areas with the threshold depth of mean higher high tide.* *The U.S. Geological Survey defines "mean higher high tide" as the average height of the higher of two unequal daily high tides over 19 years. DTSC believes the term "mean higher high tide" is confusing to the general public. Landowners and occupants at properties identified with threshold depth of mean higher high tide would have difficulties in discerning whether Ordinance Number 2824 applies.* *Since the threshold depth of mean higher high tide does not change with time, the City of Alameda should amend the Ordinance Number 2824 figure to specify the actual depth below the current ground surface beyond which an excavation permit is required. To account for future land alteration, the Ordinance Number 2824 figure should include elevations referenced to the Alameda Datum for all corresponding threshold depths referenced to the current ground surface elevations. Such specification would afford property owners and occupants immediate knowledge of whether an excavation permit is required for the subsurface intrusion contemplated.*	***The "Environmental Disclosure" attached to the deeds included a section regarding the Marsh Crust. The section stated pertinent information about the marsh including threshold depths below the ground surface. Any amendment on the Ordinance that would be required may be an issue between the DTSC and the City of Alameda.***

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Number	Comment	Response
13	*Incomplete Remedy Implementation: The Marsh Crust RAP/ROD selected the institutional controls remedy consisting three tiers of land use controls: (a) environmental restrictions in a deed, (b) Covenant to Restrict Use of Property, and (c) Ordinance Number 2824. The Navy has not implemented the first and second tiers of the selected remedy for the Alameda Point except the former East Housing Area. Please revise the Marsh Crust Five-Year Review Report to document the unfinished remedies and provide an implementation schedule.*	***Comment noted. The Environmental Restrictions in the Deed (item a), and Covenant to Restrict Use of Property (item b), would be implemented in the future transfer of the property included in the Marsh Crust and Subtidal area at Alameda Point. These land use controls and their implementation will be included in the LUC RD, which is scheduled for completion by the Navy in the FY 2006.***
14	*Fact Sheet and Public Notice: Please revise the fact sheet and newspaper public notice consistent with the changes made in the Five-Year Review Reports.*	***Comment noted.***
	Specific Comments	
1	*Acronym: Please include "FISCA" for the "Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex" in the acronym list of both reports.*	***'FISCA' will be added to both lists of acronyms.***
2	*Table of Contents: Please provide page numbers for Sections 8, 9, and 10 in both reports.*	***These sections are single pages of text with no subsections and no pages other than the first page. As such, in accordance with the writing style used for this report, page numbers are not shown on the table of contents.***

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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
3	*IR02 Five-Year Review Report, pages ES-1, 3-1, and 4-2: The Executive Summary and page 3-1 state that IR02 is about 12.5 acres in size; however, page 4-2 details that the western one-third and eastern two-third of IR02 are approximately 2.5 acres and 8.1 acres, respectively. Please reconcile the discrepancy and provide accurate acreages for the areas.*	***The RAP/ROD for Site IR02, dated June 25, 2001, on page 2-1 states that 'IR02 occupies approximately 10.6 acres'. The 8.1 acres and 2.5 acres mentioned add up to 10.6 acres. The 12.5 acres mentioned in the text will be changed to 10.6 acres for Site IR02.***
4	*IR02 Five-Year Review Report, page 1-2: Please replace "four appendices" with "eight attachments."*	***The modification will be made as suggested.***
5	*IR02 Five-Year Review Report, page 4-4, fourth paragraph, last sentence: Please replace the sentence with the following:* *"The DTSC has determined (a) that the soil remediation at Site IR02 has been completed, (b) that no further physical action is necessary to remediate PCB and cadmium in the soil at Site IR02, (c) that final decision on residential use in the western one-third of Site IR02 will depend on the results of the ongoing groundwater investigation and adequate remediation of the benzene/naphthalene plume, and (d) that DTSC would record a release of the existing land use restriction when DTSC has concluded that residential use is appropriate."*	***The sentence referred to will be expanded as suggested, in agreement with the DTSC letter to the Navy dated February 27, 2004.***
6	*IR02 Five-Year Review Report, page 6-1, fifth bullet: Please include DTSC representative as one of the interviewees.*	***DTSC will be added as one of the interviewees. Please refer to Section 6.5 of the report for a full listing of those interviewed, including DTSC.***

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Number	Comment	Response
7	*IR02 Five-Year Review Report, page 7-2: Please replace "CCOC" with "COC."*	***The text will be modified as suggested.***
8	*Marsh Crush Five-Year Review Report, page 1-2: Please replace "four appendices" with "seven attachments."*	***The modification will be made as suggested.***
9	*Marsh Crush Five-Year Review Report, page 4-4: Please spell out "LUCICP" before its use.*	***The modification will be made as suggested.***
10	*Marsh Crush Five-Year Review Report, page 7-1: Please spell out "SMP" before its use. There are two Site Management Plans, one prepared by the Navy and the other by Catellus Development Corporation, for different objectives. Please discuss the differences between the two.*	***'SMP' will be spelled out as suggested. Section 7.1, page 7-1, explains that there are two SMPs prepared by separate entities for different purposes.***

Response to Comment # 7 (continued):

CCR Title 22, §67391.1. Requirements for Land Use Covenants.

(a) Except as provided in subsection (f) of this section, a land use covenant imposing appropriate limitations on land use shall be executed and recorded when:

(1) Facility closure, corrective action, remedial or removal action, or other response actions are undertaken pursuant to chapter 6.5, 6.8, or 6.85 of division 20 of the Health and Safety Code, or article 1 of chapter 1, part 10.5 of the Education Code; and

(2) Hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land.

(b) The Department shall not approve or concur in a response action decision document which includes limitations on land use or other institutional controls, unless the limitations or controls are clearly set forth and defined in the response action decision document. Except as provided in subsection (f) of this section, any response action decision document shall (1) specify that the limitations or controls will be incorporated into an appropriate land use covenant as required by this section and (2) include an implementation and enforcement plan. The Department shall provide public notice of the response action decision document in a manner that meets the requirements of Health and Safety Code section 25356.1(e)(2) or section 25398.6(i). DTSC will consult with local agencies, including local reuse authorities, as appropriate.

(c) Except as provided in subsection (f) of this section,

(1) The Department shall not certify that a response action has been satisfactorily completed, with the exception of any necessary long term operation and maintenance activities, until such land use covenants required by this section have been signed and recorded in the county, or

(2) The Department shall not acknowledge final certification of closure of a hazardous waste disposal unit until such land use covenants required by this section also meet the requirements of sections 66264.119 or 66265.119 as applicable.

(d) All land use covenants pursuant to this section shall be executed by the Department and the landowner and shall be recorded in the county where the land is located. All land use covenants shall run with the land pursuant to Civil Code section 1471 and/or Health and Safety Code sections 25202.5, 25222.1, 25355.5, or 25398.7 and 25396(*l*) and shall continue in perpetuity unless modified or terminated in accordance with applicable law.

(e) Federal Property.

(1) The Department shall not consider property owned by the federal government to be suitable for transfer to nonfederal entities pursuant to 42 United States Code section 9620(h)3-4 where hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels which are not suitable for unrestricted use of the land, unless an appropriate land use covenant will be executed by the Department and the federal government and recorded in the county where the land is located in accordance with this section.

(2) Whenever the Department determines that it is not feasible to record a land use covenant for property owned by the federal government, such as transfers from one federal agency to another, the Department and federal government may use other mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property. Examples include: Amendments to the federal government facility master plan, physical monuments, or agreements between the federal government facility and the Department.

(f) Whenever the Department determines that it is not feasible to establish a land use covenant as a component of a remedy for a site, it may use other institutional control mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property.

(1) Examples include publicly owned tidelands trust property: such mechanisms may include, but are not limited to physical monuments, or a memorandum of agreement or consent agreement between the Department and the trustee for the tideland trust property.

(2) If the Department subsequently determines that it is feasible to record land use covenants for such sites, the Department shall ensure that the land use covenants are recorded in accordance with (d).

(g) Modification and Termination. The Department may modify or terminate land use covenants if it determines such modification or termination is protective of public health and safety and the environment.

(h) The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls.

(i) For purposes of this section:

(1) "Department" means the Department of Toxic Substances Control.

(2) "Federal property" means that property found in the Federal Property and Administrative Services Act of 1949, as amended, 40 United States Code sections 471 et seq.

(3) "Land use covenants" include easements, servitudes, covenants and restrictions which run with the land and restrict uses to protect public health and safety and the environment.

(4) "Response action decision document" means a remedial action plan, removal action workplan, record of decision, closure plan, documents written pursuant to a corrective action order or corrective action consent agreement, or other similar documents which formally select an action to be taken in response to the release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances.

(5) "Unrestricted use of the land" means that the land may be used for any purpose.

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Comments by: Anna-Marie Cook, USEPA

Number	Comment	Response
1	*Page 2-2, Chronology of Site IR 02 Events:* *The RI report stated that site-related soil contamination had been generally limited to the upper one foot of soil. However, the report fails to mention anything about PAH contamination. This chronology of events should include information pertaining to the most recent rounds of PAH sampling, the highest detection limits utilized for the PAH analyses, the screening level used to determine whether remediation is necessary, and the depth, prior to encountering the Marsh Crust, at which PAH contamination is found.* *The interim lead clean up goal for the residential portion of the IR 02 has been stated as 324 mg/kg. This level is significantly higher than that used to clean up residential portions of Alameda Point. There is no mention later in the report of this interim clean up goal being reevaluated for a potentially more conservative clean up number. Please explain why this level is considered protective for the Annex.*	***There has been no PAH contamination issue for the shallow soils at Site IR02 based on the current reuse plans: residential at the western one third portion of the site and industrial/commercial at the remaining two thirds portion. This has been documented in the interim restrictions of the Transfer Deed dated July 17, 2000 and FFSRA of May 2000. The FFSRA schedule states that PA/SI for base wide PAH excludes Site IR01 and west end of Site IR02. Except for Sites IR01 and IR02, the base wide PAH issue was whether or not the soil with PAHs was suitable for residential use. The PA/SI Action Level Decision Document reviewed by DTSC on September 11, 2000 has determined that at location #5, the residential reasonable maximum exposure (rme) risk due to PAHs was 5E-05 and the site wide rme was 7E-06; DTSC screening level of 0.62 mg/kg B(a)P was exceeded in some areas. As a result DTSC and Navy have agreed to restrict the Annex, except Site IR01 and western one third portion of Site IR02, to commercial/industrial use. This Statutory Five-Year review is about the PCB and cadmium impacted near surface soils at Site IR02. The Chronology of Site IR02 Events will be revised for clarity if necessary*** ***Contrary to the comment, the interim lead clean up goal of 324 mg/kg is for the industrial use portion of Site IR02. This is below the 2004 Soil PRGs of 400 mg/kg for residential use and 800 mg/kg for industrial use areas. The lead contaminated soil removal action started in 1995 and removed lead in soils with concentrations of up to 26,600 mg/kg. Confirmation sampling***

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Comments by: Anna-Marie Cook, USEPA

Number	Comment	Response
1 *(continued)*		***confirmed that the clean up goal was met. After the removal action, the 1996 RI used the College of Alameda for background metals to determine the COCs. Lead was eliminated as a COC because its concentration was lower than background. The UCL_{95} lead concentration was 35.6 mg/kg while the UCL_{95} at the college was 59.18. As stated, the draft Statutory Five-Year Review report will be clarified as necessary on the final submittal.***

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Comments by: Anna-Marie Cook, USEPA

Number	Comment	Response
2	*Page 3-4, second paragraph: It appears that the interim clean up level for lead was not reviewed and that lead was not retained as a COC .*	***Lead was not retained as a COC. According to the 2001 RAP/ROD metals were eliminated as COCs if their UCL_{95} was less than the UCL_{95} of the reference. Site IR02 reference ambient soil UCL_{95} level for lead was 59.18 mg/kg. The UCL_{95} level for Site IR02 soils reported in the 1996 Site IR02 RI (0 to 10 feet) was 35.6 mg/kg. Please also see response to Comment # 1 above.***
3	*Page 3-4, Initial Response, second paragraph: While lead has been included here, the interim clean up goal still seems inconsistent with that used at the Point.*	***The current cleanup goal for lead in soil for residential use area under the petroleum cleanup program at Alameda Point is 221 mg/kg, and it is 750 mg/kg for the industrial use area. Please also see responses to Comments # 1 and # 2 above.***
4	*Page 3-4, Initial Response, last paragraph: The removal action has been described as reaching depths of up to two feet, yet in this paragraph the high PCB hit was at seven feet. Did the removal action go to seven feet? If so, the description of the removal action needs to be revised. If not, an explanation of why the contamination was not cleaned up needs to be given.*	***Yes, PCB removal in the 1998 second initial response which this comment is referring to extended to depths of seven feet in a specific and isolated area of Site IR02. Confirmation samples verified that the cleanup level of 1 mg/kg PCB was achieved at the conclusion of this action.*** ***This removal action took place near a sump located in the industrial/commercial use area of Site IR02. Figure 2 of the Site IR02 draft Five-Year Review Report (August 2005) illustrates the location of this sump.*** ***In the final Site IR02 remedial removal action, PCB- and cadmium-impacted soil excavations extended to depths of as much as 2 feet below ground surface. Figure 8 of the Final***

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Comments by: Anna-Marie Cook, USEPA

Number	Comment	Response
4 (continued)		***Close-out Report dated December 26, 2001 for Site IR 02 supports this response. Figure 8 illustrates the grid system used and lists the excavation depths achieved. Figure 8 also shows that soils on the border of Site IR02 as well as soils immediately off-site have also been remediated when found to be necessary.***
5	*Page 3-5, Basis for Taking Action, fifth paragraph: EPA was unaware that the Navy and DTSC had agreed upon and were using a set of inorganic background concentrations taken from the College of Alameda. We request a copy of these concentrations so that we may compare them to the background concentrations generated for Alameda Point, and ensure that there are no major inconsistencies between the two sets of data.*	***College of Alameda soil sampling is discussed in the 1996 RI Report for Site IR02. The discussion provides tabulated data as well as soil sampling locations at the College of Alameda.***
6	*Page 4-2, last paragraph: While it is interesting to note the extent of contamination in the upper one foot of soil in the residential portion of IR 02, it appears an omission to exclude a discussion of the contamination found from 0 - 2 feet, 0 - 4 feet and 0 - 8 feet.*	***The chemical compounds of concern for the purposes of the shallow soil remediation and the subject of this five-year review report were PCBs and cadmium in soils. Please also see response to Comment # 4 above. The comment about 0-2, 0-4, and 0-8 feet is not clear and appears not to be applicable to the issues addressed in this five-year review.*** ***Remediation of PCB- and cadmium-impacted soils at Site IR02 have been completed, and DTSC has concurred.***

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Comments by: Anna-Marie Cook, USEPA

Number	Comment	Response
7	*Page 4-4, last paragraph: The remediation of shallow soil at IR 02 has only been completed for PCB and cadmium contamination. In the Final Closure Report for IR 02 of 2001, it is stated that a RAP/ROD for PAH contamination in shallow soils will be forthcoming. This step has not been taken yet, and so the remediation of shallow soil at IR 02 cannot be considered complete.*	***Remediation of PCB- and cadmium-impacted soils at Site IR02 has been completed consistent with the intentions of the Site IR02 RAP/ROD (2001).*** ***PAH-impacted soils at the western, residential use portion of Site IR02 were removed during the PCB and cadmium mitigation event. The eastern portion of Site IR02 is restricted to commercial and industrial use, and no further action is required in this area.***
8	*Page 6-2, third paragraph: Without having the decision document for PAH contamination finalized, it is not possible to know whether there will be a prohibition on ingestion of produce grown on this property.*	***Please see response to Comment # 7 above.***
9	*Page 7-2, Section 7.3: PAH contamination remedial action objectives have not been set for soil above the March Crust, nor has the required depth of clean up been decided.* *In addition, the long term potential inhalation threat posed by naphthalene and benzene in the groundwater has not been discussed, and the protective measures necessary to allow current residential development in the vicinity of this groundwater contamination have not been explained in this document. Because there is no ROD for groundwater at this time, there are no remedial measures in place to prevent exposure through the inhalation pathway.*	***Please see response to Comment # 7 above for PAHs.*** ***Groundwater issues will be addressed under a different ROD. This five-year review was only for the PCB- and cadmium-impacted soils of Site IR02.***

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Comments dated October 06, 2005; Received October 17, 2005; Navy Response date: January 18, 2006

Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
	General Comments	
1	*Please add a description of activities related to radioactivity in IR02 shallow soil to the "Chronology of Site IR02 Events" in Section 2 of Part 1. Although the 5-Year Review briefly mentions radioactivity elsewhere in Part 1 (p. 4-3 bottom, p. 4-4 bottom, and p. 6-2), the radioactivity issue is poorly described. Considering Navy's extensive and protracted efforts to address radioactivity at IR02, a more explicit discussion would be useful, especially in the chronology table, with appropriate citations in Attachment A.*	***Under Chronology of Site IR02 Events, Navy will add the document "Final Report – Radiological Characterization Final Status and Sampling Project dated August 27, 2003".*** ***Following the completion of the RAP/ROD, the Navy re-investigated the entire Site IR02 for radioactivity in soil. California DHS concurred with the Navy determination that the radioactivity in Site IR02 soils is equal to background levels and acceptable for unrestricted use.*** ***Navy will expand the radioactivity in Site IR02 soil discussion in the next submittal of the five-year review report, and will add the above document in Attachment A.*** ***Please note that the principal subject of this five-year review is the PCB- and cadmium-impacted surficial soils of Site IR02. As such, other issues such as PAHs in site soils, groundwater, and radiological investigations at Site IR02 were not addressed in any detail, but mentioned for completeness. These issues are discussed in detail in numerous environmental documents that have been prepared for Site IR02. PAHs and groundwater issues will have their individual decision documents.***

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Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
2	*The presentation of the documentation is somewhat confusing. It is not made clear to the reader why these two sites (IR 02 and Marsh Crust) are presented together (e.g., are they related to each other aside from the timing of the remedy implementation). It would be helpful if the title included numbering (such as: 1) IR 02... and 2) Marsh Crust....) to identify that the Review is a two-part document, each part dealing with a separate site.*	***A 'Preamble' section will be added after the title page of the report that will provide the reader with the type of information referred to in the comment.***
3	*Also, the use of the photo of the airfield in the draft fact sheet to represent the Marsh Crust issue is misleading, because marsh crust is more likely to be encountered at the eastern portion of the former NAS and on the FISC Annex site.*	***This five-year review for Alameda Point involved an evaluation of the protectiveness of the remedy implemented for the marsh crust <u>and</u> the former subtidal area materials. These materials jointly occur beneath Alameda Point; the subtidal area more so beneath the western portions of the site. As such, the photograph in question provides an insight into the existing ground surface overlying both of these materials.***
	Specific Comments	
1	*<u>Part 1, Section 3 Site Background</u> (p. 3-1 top) The text locates Alameda Facility/Alameda Annex (FISCA) "less than 1 mile east of the former Naval Air Station (NAS)". Please note that FISCA is adjacent to the former NAS, as is correctly stated elsewhere in the 5-Year Review (Part 2, p. 3-1 top).*	***The second sentence of the first paragraph of Section 3, page 3-1, will be modified as follows:*** ***"...FISCO main base, and adjacent to and east of the former..."***

NAVY RESPONSES TO CITY OF ALAMEDA COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005
INSTALLATION RESTORATION (IR) SITE 02 at
Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex;
MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated October 06, 2005; Received October 17, 2005; Navy Response date: January 18, 2006

Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
2	*Part 1, Section 3.5 Basis for Taking Action (p. 3-5 middle) The text states "Chemicals of potential concern (COPC) identified in Site IR02 soils were grouped into five categories: PCBs, metals, VOCs, SVOCs, and TPH. Many of these contaminants appeared to originate from former industrial facilities that had operated in the region, including two manufactured gas plants and an oil refinery." Other Navy documents for FISCA and Alameda Point typically attribute only PAHs (polynuclear aromatic hydrocarbons) to these former industries. Please verify that other contaminant types also have been linked to the former industries.*	***Navy agrees that the wording of this third paragraph of page 3-5 is too general, and could lead to misunderstandings. As such, Navy will replace the entire third paragraph with the following:*** ***"The shallow soils within Site IR02 appear to have been impacted by the screening lot and scrapyard activities once conducted on this site. The site-related shallow soil contaminants include metals, PCBs, TPH as motor oil, and lead. Historic soil contaminants include arsenic, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chromium, chrysene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and vinyl chloride. In general, the site-related soil contamination appears to be limited to the upper one to two feet of the soil profile whereas the historic contaminants are typically found deeper in the soil profile."*** ***For additional details, please refer to the 1996 RI report for Site IR02.***
3	*Part 1, Section 4-1 Selected Remedy (p. 4-1) The first paragraph of this section states "The Site IR02 RI reported that ... the existing non-cancer risk hazard index was greater than 1.0 for exposure of future site workers to cadmium, in site shallow soils." (emphasis added) However, at the bottom of the same page, the third RAO is "Prevent ingestion of or direct contact with cadmium-contaminated soil by future residents in the 0 to 1-foot bgs interval in excess of concentrations that exceed a hazard quotient of 1." (emphasis added) Please clarify whether future site workers or future residents are the receptors.*	***The second part of the sentence referred to in this comment explains the potential risks to human health in the context of future industrial and residential land use scenarios. Further, all three RAOs, collectively, provide that future residents and future workers are deemed to be potential receptors.***

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MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated October 06, 2005; Received October 17, 2005; Navy Response date: January 18, 2006

Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
4	*Part 1, Section 4-2 Remedy Implementation (p. 4-3 middle) The text states "Initially, a 6-inch thick layer of soil and other debris were excavated from each area in which the soil cleanup level for PCB or cadmium was exceeded, and confirmation samples were collected from remaining soils in the center and at the edge of the excavated areas (Figure 2)." Please revise Figure 2 to clearly show the areas discussed in this sentence.*	***Figure 2 is helpful in that it illustrates the portions of Site IR02 where PCBs and cadmium were reported exceeding cleanup levels. Figure 2 was used only in the decision document. Another figure will be included in the next submittal of this five-year review report illustrating the actual depths of excavations and confirmation sampling. This figure will be excerpted from the Final Closeout Report for Site IR02, dated December 26, 2001.***
5	*Part 1, Section 6.5 Interviews (p. 6-4 middle) A comma is missing in the seventh interviewee entry after the word "Principal". Please insert the comma to avoid misinterpretation of the interviewee's affiliation.* *This error also occurs in Part 2, Section 6.5 Interviews (p.6-4 bottom).*	***The text will be modified as suggested.***
6	*Part 2, Section 2 Chronology of Site Events (p. 2-2 middle) Please correct the double occurrence of "OU-2" in the 1999 entry.*	***The second 'OU-2' will be changed to 'OU-3'.***

NAVY RESPONSES TO CITY OF ALAMEDA COMMENTS
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ALAMEDA, CALIFORNIA

Comments dated October 06, 2005; Received October 17, 2005; Navy Response date: January 18, 2006

Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
7	*Part 2, Section 2 Chronology of Site Events (p. 2-2 middle) The entry for February 15, 2000 states that the Marsh Crust Ordnance provides "standards and procedures to be followed regarding excavation and pile driving in the marsh crust area." (emphasis added) Please delete the reference to pile driving or note that Alameda Ordinance No. 2824 (the Marsh Crust Ordnance) exempts most pile driving: "13-56.4 Exception to Permit Requirement. a. No permit shall be required under this Section 13-56 for pile driving or other penetration of the marsh crust/subtidal zone that involves neither (i) bringing materials from below the threshold depth to above the threshold depth; nor (ii) exposure of construction workers to soil excavated from below the threshold depth."*	***'Supplement to Notice of Exemption, Marsh Crust Excavation Ordinance' portion of Ordinance No. 2824, under the section titled 'Ordinance' states that 'The Ordinance provides for standards and procedures to be followed regarding excavation and pile driving in the Marsh Crust area'.*** ***Section 13-56.4 states that a permit under the ordinance is not required as long as no marsh crust materials are brought up to above the threshold depth, whether due to pile driving or due to excavation of soils.***
8	*Part 2, Section 3.1 Physical Setting (p. 3-2 middle) The last sentence of this section is ' [he Bay Mud underlies both the marsh crust and the former subtidal land beneath Alameda Point." Please note that the southeast portion of Alameda Point is not underlain by Marsh Crust.*	***Comment noted.*** ***The source for this section of the five-year review report is the marsh crust and former subtidal area RAP/ROD for the FISCA and Alameda Point, dated February 2001, page 2-9, subsection titled 'Alameda Point'.***
9	*Part 2, Attachment E Interview Records (p. E-4 middle) Please change the location of the land use control documents to accurately report what Mr. McFann said. They are filed at the County Recorders Office for Alameda County.*	***The text will be modified as suggested.***

RESPONSES TO REVIEW COMMENTS

Dated February 2006

Received from:

DTSC
USEPA

On

DRAFT

STATUTORY FIVE-YEAR REVIEW REPORT

Dated August 2005

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
INSTALLATION RESTORATION (IR) SITE 02 at
Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex; and for
MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
	The Department of Toxic Substances Control (DTSC) has received the Responses to Comments (RTCs) dated January 18, 2006 on the Installation Restoration Site 02 (IR02) Five-Year Review Report and Marsh Crust Five-Year Review Report. DTSC forwarded a comment letter on the documents on October 27, 2005. DTSC has reviewed the RTCs and has further comments as follows:	***Comment noted.***
1	*General Comments 1, 2, 3, 6, 7, 8, 9, 11, 13, and 14: DTSC agrees with the RTCs. DTSC awaits the revised reports and will provide further comment, if necessary.*	***Comment noted. Thank you.***
2	*Specific Comments 1 thru 4 and 6 thru 10: DTSC agrees with the RTCs. DTSC awaits the revised reports and will provide further comment, if necessary.*	***Comment noted. Thank you.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
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MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
3	*General Comment 4: DTSC agrees that the IR02 Five-Year Review Report should evaluate the effectiveness of the remediation of PCB and cadmium contaminated shallow soil as intended in the decision document. However, the discussion regarding the suitability of residential land use as presented in the IR02 Five-Year Review Report is erroneous as stated in DTSC's comment letter dated October 27, 2005. DTSC requests deletion of all language on the suitability of residential land use from the IR02 Five-Year Review Report, fact sheet, newspaper public notice, and various summary forms/documents. DTSC will require institutional controls in the upcoming decision documents for the groundwater and soil contaminations at IR02 before concurring that a portion of IR02 is suitable for residential land use.*	***Navy agrees with the comment. The Five-Year Review report will be revised to remove any ambiguities.***
4	*General Comment 5: The Navy plans to prepare the Land Use Control Remedial Design to recommend whether future five-year reviews would be necessary for the marsh crust and former subtidal area. Please note that five-year reviews at a site can only be ended when all hazardous substances, pollutants, or contaminants have been removed or remediated, and the residual chemical concentrations are at levels suitable for unrestricted use. DTSC believes such additional remediation is cost prohibitive and less likely to be implemented. Therefore, the Land Use Control Remedial Design would not be able to recommend termination of the five-year review program. Please remove such objective for the Land Use Control Remedial Design.*	***Navy will remove the objective as stated in this comment by DTSC.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
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MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
5	*General Comment 10: DTSC awaits a copy of homeowner deed of trust and will provide further comment on the Marsh Crust Five-Year Review Report, if necessary.*	***Comment noted. Navy has acquired addresses of properties in the former East Housing area, now known as Bayport Development, and it is in the process of researching at the Recorder's office for copies of deeds of trust.***
6	*General Comment 12: DTSC has determined that the Marsh Crust remedy (i.e., Ordinance Number 2824) is not effective because property owners would have difficulty in recognizing the threshold depths in plain language. The Navy adopted this Ordinance as the Marsh Crust remedy and the onerous is with the Navy to work with the City of Alameda to ensure remedy effectiveness. Since the threshold depth of mean higher high tide does not change with time, the City of Alameda should amend the Ordinance Number 2824 figure to specify the actual depth below the current ground surface beyond which an excavation permit is required. In addition, the Ordinance Number 2824 figure should include elevations referenced to the Alameda Datum for all corresponding threshold depths to account for future land alteration. Such specification would afford property owners and occupants immediate knowledge of whether an excavation permit is required for any potential subsurface intrusion.*	***As stated in Navy's previous response to this comment, any amendments to the City of Alameda Ordinance No. 2824 may be an issue between the DTSC and the City of Alameda. Navy will inform the City of Alameda about this comment from the DTSC.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
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ALAMEDA, CALIFORNIA

Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
7	*Specific Comment 5: Please see Comment 3 of this letter.*	***Navy agrees with the comment. The Five-Year Review report will be revised to remove any ambiguities.***
	Please revise the Five-Year Review Reports in accordance with this letter and forward the redline reports in Portable Document Format files. DTSC will review the revised reports and subsequent RTCs to ensure that all comments have been addressed appropriately.	***Comment noted. Navy will incorporate the responses to the comments provided herein, as well as responses to DTSC's October 27, 2005 comments into the Five-Year Review Reports. The modifications to these reports will be redlined using the 'Track Changes' mode of Microsoft Word and the modified document will be transmitted to DTSC in PDF format.***

NAVY RESPONSES TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) Region IX COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
INSTALLATION RESTORATION (IR) SITE 02 at
Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex; and for
MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated February 13, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Anna-Marie Cook, Remedial Project Manager, USEPA Region IX

Number	Comment	Response
1	*EPA has received the Response to Comments from the Navy, dated January 18, 2006, for the Draft Statutory Five-Year Review for Site IR02 Alameda Annex and Marsh Crust at Alameda Annex and Alameda Point. It appears that all reviewers were confused about the intended scope of the Five Year Review and it is not clear from the Navy's response how the text will be revised to eliminate this confusion. EPA recommends that the Navy clarify in the Draft Final document, and in the title, that the review concerns* ***only*** *the effectiveness and protectiveness of the* ***PCB and cadmium*** *remedy for* ***shallow soils*** *at IR-02 and the remedy for the Marsh Crust at Alameda Annex and Alameda Point. EPA also recommends that the document clearly state that PAHs in soil above the depth of the Marsh Crust, and benzene and naphthalene contamination in groundwater will be addressed in future remedy decision documents.*	***Shallow soils will be added to the title of Site IR02 Five-Year Review report. The report will be revised to state that the groundwater benzene plume underneath Site IR02 will be addressed in future remedy decision documents.***

NAVY RESPONSES TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) Region IX COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
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Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex; and for
MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated February 13, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Anna-Marie Cook, Remedial Project Manager, USEPA Region IX

Number	Comment	Response
2	*As a follow up to the response to EPA's comment # 5, we request a copy of the 1996 Site IR-02 RI and associated tables to use as a reference for the background inorganics compiled from the College of Alameda site. There is an ongoing and unresolved discussion between the Navy and the Department of Toxic Substances Control concerning the adequacy of the Alameda Point background inorganic values and it is essential to the progress of the Alameda Point clean up program that a comparison between the DTSC approved College of Alameda data and the in-question Alameda Point background values be made as soon as possible to determine whether there are any major discrepancies. Since both the Navy and DTSC have accepted the College of Alameda values in the course of completing the RI/FS/RAP/ROD process for the Alameda Annex, it may be most efficient for the Alameda Point BCT to simply use the College of Alameda background data in lieu of that generated for Alameda Point. However, EPA will first need to verify that the data for the College of Alameda is adequate for use in this purpose.*	***A copy of the 1996 RI Report may have been provided to the USEPA when the document was distributed to the regulatory agencies. Navy will provide a copy of the report to the USEPA on a CD in pdf format.*** ***The 1996 RI report comprises five volumes. Information on the College of Alameda site investigation for developing background values for use in investigations of Site IR02 can be found in Volume I, Section 5, pages 5-83 to 5-92 and in associated tables of the 1996 RI report. Mary Parker recently provided a summary of the data on background metals taken from the College of Alameda.***

RESPONSES TO REVIEW COMMENTS

Dated April 2006

Received from:

DTSC

On

DRAFT FINAL

STATUTORY FIVE-YEAR REVIEW REPORT

Dated March 2006

PCB and CADMIUM IMPACTED SHALLOW SOILS REMEDIATION

SITE IR02

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
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INSTALLATION RESTORATION (IR) SITE 02 at
Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex; and for
MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Comments dated April 06, 2006; Received April 06, 2006; Navy Response date: April 14, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
	(A) FIRST STATUTORY FIVE-YEAR REVIEW OF REMEDIES IMPLEMENTED FOR PCB AND CADMIUM IMPACTED SHALLOW SOILS AT INSTALLATION RESTORATION SITE 02, FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX, ALAMEDA, CALIFORNIA *(B) FIRST STATUTORY FIVE-YEAR REVIEW OF REMEDIES IMPLEMENTED FOR MARSH CRUST AT FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX, AND MARSH CRUST AND FORMER SUBTIDAL AREA AT ALAMEDA POINT, ALAMEDA, CALIFORNIA* *The Department of Toxic Substances Control (DTSC) has received the redlined version of the above-mentioned reports dated March 2006 and the Responses to Comments dated March 20, 2006. DTSC issued comment letters on previous draft reports on October 27, 2005 and February 22, 2006. DTSC has reviewed the redlined reports and the responses. The remaining issues are as follows:*	***Comment noted.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
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ALAMEDA, CALIFORNIA

Comments dated April 06, 2006; Received April 06, 2006; Navy Response date: April 14, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
1	*Approval Authority: DTSC asserts approval authority on the Five-Year Review Reports. Please include the following signatory in the report approval sheets:* *Anthony J. Landis, P.E.* *Chief, Northern California Operations* *Office of Military Facilities* *Department of Toxic Substances Control*	***The Navy has reviewed its policy on conducting statutory five-year reviews for its Installation Restoration sites, and has confirmed that only the Navy has signature authority of its five-year review reports.*** ***The Navy further discussed its position on this issue with the DTSC at the Alameda BCT Meeting on April 12, 2006, and informed the DTSC that the Navy will sign the five-year review report.***
2	*Threshold Depth: The Remedial Action Plan/Record of Decision for the marsh crust at the former Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA) and marsh crust and subtidal area at the Alameda Point selected institutional controls as remedy. Such controls include environmental restrictions in a deed, Covenant to Restrict Use of Property, and the City of Alameda's Ordinance Number 2824. The remedy generally relies on Ordinance Number 2824 that requires a permit, hence proper soil management, for any excavation deeper than certain location dependent "threshold depth."* *The figure attached with Ordinance Number 2824 shows the threshold depths (in feet below ground surface) beyond which an excavation permit is required. The figure identifies areas with threshold depths of 15, 10, and 5 feet below ground surface. The figure also depicts areas where a permit would apply for excavation deeper than the mean higher high tide. Most of the Bayport homes are located in areas with a threshold depth of mean higher high tide.*	***Navy agrees that the threshold depth figure would need to be modified as site development and construction activities expected at FISCA and Alameda Point properties increase with time. The Navy has expressed its response to this request from the DTSC previously that modifications of this figure would be best undertaken by the City of Alameda and the DTSC, in accordance with the environmental covenants enacted between these two entities, and that the Navy would inform the City of Alameda as to the DTSC's request.*** ***At the Alameda BCT Meeting on April 12, 2006, the Navy confirmed its position on updates to the threshold depth figure by informing the DTSC that the Navy has contacted the City of Alameda (Dr. Peter Russell) about DTSC's request for modifications to the threshold depth figure. Dr. Russell had responded that the City of Alameda plans to do such***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
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Comments dated April 06, 2006; Received April 06, 2006; Navy Response date: April 14, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
2 *(continued)*	*The U.S. Geological Survey defines "mean higher high tide" as the average height of the higher of two unequal daily high tides over 19 years. DTSC believes the term "mean higher high tide" is unclear to the public and the City's building officials. Landowners and occupants at properties identified with a threshold depth of mean higher high tide would have difficulty in discerning whether Ordinance Number 2824 applies.* *Since the threshold depth of mean higher high tide is not likely to change significantly within the five-year review timeframe, the City of Alameda should amend the Ordinance Number 2824 figure to specify the actual depth below the current ground surface beyond which an excavation permit is required. To account for future land alteration, the Ordinance Number 2824 figure should also include elevations referenced to the Alameda Datum for all corresponding threshold depths. Such specification would afford the City's building officials, property owners, and occupants immediate knowledge of whether an excavation permit is required for a proposed subsurface intrusion.* *DTSC reiterates that the marsh crust remedy (i.e., Ordinance Number 2824) as written is very difficult to interpret and enforce, and is therefore not effective. The Navy adopted this ordinance as the marsh crust remedy and the burden is with the Navy to work with the City of Alameda to ensure remedy effectiveness. Until the City of Alameda modified Ordinance Number 2824 as requested in this letter, DTSC would not be able to approve the Marsh Crust Five-Year Review Report.*	***modifications once the elevations of the final site construction grades have been established and it will coordinate with DTSC.***

PART II

FINAL REPORT

FIRST STATUTORY FIVE-YEAR REVIEW of Remedies Implemented for

MARSH CRUST
Fleet and Industrial Supply Center Oakland
Alameda Facility/Alameda Annex (FISCA)

and

MARSH CRUST and FORMER SUBTIDAL AREA
Alameda Point

Alameda, California

EXECUTIVE SUMMARY

This report presents the results of the first statutory five-year review of the land use controls remedy that has been implemented for the marsh crust and the former subtidal area materials underlying the former Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA) and Alameda Point, formerly known as Naval Air Station (NAS) Alameda, located in Alameda, California. This remedy has been described and published in the marsh crust and former subtidal area Remedial Action Plan/Record of Decision (RAP/ROD) dated February 2001. This decision document was approved by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) on February 2, 2001.

This five-year review report was prepared by Brown and Caldwell under subcontract with CDM Federal Programs Corporation for the Navy Multi-Media Contract N68711-00-D-0004, and conducted in accordance with the Department of the Navy (DON) and Marine Corps *Policy for Conducting Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Statutory Five-Year Reviews,* revised May 2004, and the USEPA's *Comprehensive Five-Year Review Guidance* dated June 2001.

The five-year review process for the marsh crust and former subtidal area materials involved reviews of relevant documents and data, a visual inspection of the properties overlying these materials, and interviews with persons involved with many aspects of selection and implementation of the remedy for these materials. The purpose of this five-year review was to evaluate whether the remedy that has been implemented for the marsh crust and the former subtidal area materials remained protective of human health and the environment as intended by the decision documents. The methods used in assessing the implementation and performance of the selected remedy, as well as the findings and conclusions of these evaluations are documented in this five-year review report.

A deeply buried layer of historically contaminated sediments known as the "marsh crust" and the "former subtidal area", approximately 2 to 6 inches thick, is found underlying much of the properties once occupied by FISCA and NAS Alameda. Subsurface investigations conducted at these properties for various environmental assessments have encountered the marsh crust and the former subtidal area over a large areal extent, at depths ranging from 10 to 20 feet below ground surface (bgs) at FISCA, and from 4 feet to 10 feet bgs at Alameda Point. These materials have been buried by historical areal fill placed over them as FISCA and NAS Alameda were being developed. The marsh crust and the former subtidal area materials are believed to exist throughout these properties in a reasonably predictable, planar zone, but may not exist as a continuous layer because of the presence of tidal channels and other phenomena affecting their original deposition.

On the basis of environmental investigations and risk assessments, environmental assessments conducted for these two properties have concluded that hazardous substances are present in the marsh crust materials beneath FISCA, and in the marsh crust and former subtidal area materials beneath Alameda Point. However, these substances were considered to be low-level wastes because of their low concentrations and toxicity.

In accordance with these findings and conclusions, and, in accordance with the remedial action objective (RAO) established for the marsh crust and former subtidal area materials, CERCLA requirements, Base Realignment and Closure (BRAC) program goals, future land use plans for

FISCA and Alameda Point properties (a mixed reuse of residential, commercial, and industrial), the DON and the DTSC, with the concurrence of the California Regional Water Quality Control Board (CRWQCB), have selected land use controls (LUCs) as the remedy for the marsh crust and former subtidal area materials underlying these properties.

The selected remedy documented in the RAP/ROD prohibits excavations into the marsh crust and former subtidal area materials unless proper precautions are first taken to protect the health and safety of residents and workers and the environment, and to ensure that excavated materials are handled and disposed of properly. These land use controls, consisting of excavation restrictions and permitting requirements, are implemented through land use covenants established between DTSC and the City of Alameda; Environmental Restrictions in Deed imposed by the DON; a Lease in Furtherance of Conveyance between DON and the Alameda Reuse and Redevelopment Authority (ARRA); and the City of Alameda Marsh Crust Excavation Ordinance No. 2824, in a manner that would provide overall protection of human health and the environment.

Based on the findings of this five-year review, the land use controls remedy for the marsh crust and the former subtidal area materials has been implemented as intended by the decision documents, and the remedy as currently implemented continues to meet the remedial action objectives (RAOs), and appears to continue to provide the means for adequately restricting the potential exposure of residents, workers, and the environment to these materials.

The land use controls remedy implemented for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point properties appears to be currently providing the protectiveness of human health and the environment intended by the decision documents. Exposure of residents, workers and the environment to these materials have been restricted suitably by this remedy, addressing potential threats to human health and the environment possibly posed by these materials. Land use controls in effect clearly identify the permitting requirements and restrictions related to excavations into the marsh crust and the former subtidal area materials. The Catellus Development Corporation's Site Management Plan (SMP) for the redevelopment of portions of these properties provides guidelines for excavations and construction activities in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment.

Technical or physical issues related to the marsh crust and the former subtidal area materials that would be likely to reverse the current conditions and implemented remedy were not discovered in this five-year review.

The FISCA and Alameda Point properties overlying the marsh crust and former subtidal materials are being redeveloped in accordance with decision documents and redevelopment plans under the oversight of regulatory agencies. The actual, long-term land use conditions of the properties overlying the marsh crust and the former subtidal area materials can significantly increase over the next five years. Similarly, increased land use by new residents and workers is also to be expected. Also, future investigations and assessments could provide additional information on the threshold depths of the marsh crust and the former subtidal area materials currently depicted in land use covenants.

On the basis of the observations and findings of this five-year review, unless new information related to human health and environmental risks as currently understood to be potentially posed by the marsh crust and the former subtidal area materials is identified that would no longer require restricting exposure of residents, workers or the environment to these materials, conducting the next five-year review of the land use controls remedy currently in effect for the marsh crust and the former subtidal area materials, including an assessment of the effectiveness and protectiveness of this remedy, is recommended.

As such, the next Statutory Five-Year Review of the land use controls remedy currently in effect for the marsh crust and the former subtidal area materials underlying the FISCA and Alameda Point properties needs to be completed within the next five years, or before June 2011.

The decision document (RAP/ROD) for the marsh crust and former subtidal area materials required a Land Use Control Implementation and Certification Plan (LUCICP). The DON has generally agreed with environmental regulators that land use controls depend heavily upon long-term follow through, oversight, and enforcement to ensure their reliability and effectiveness. The DON has planned to accomplish oversight and long-term monitoring of the land use controls remedy implemented for the marsh crust and former subtidal area materials through the preparation of a Land Use Control Remedial Design (LUC RD) for FISCA and Alameda Point in fiscal year (FY) 2006. The LUC RD will develop protocols for the enforcement and monitoring of land use controls implemented for the marsh crust and former subtidal area materials underlying FISCA and Alameda Point.

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ATTACHMENTS

ATTACHMENT

A Listing of Marsh Crust and Former Subtidal Area Materials Related Documents Included In This First Five-Year Review

B Site Inspection Form, First Five-Year Review, Marsh Crust and Former Subtidal Area Materials Remedy

C Photographs Taken During Site Inspection on May 10, 2005 and Aerial Photograph of FISCA and Alameda Point Overlying the Marsh Crust and the Former Subtidal Area dated October 2004, First Five-Year Review, Marsh Crust and Former Subtidal Area Materials Remedy

D Interview Documentation Form, First Five-Year Review, Marsh Crust and Former Subtidal Area Materials Remedy

E Interview Records, First Five-Year Review, Marsh Crust and Former Subtidal Area Materials Remedy

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- "City of Alameda Marsh Crust Excavation Ordinance No. 2824" dated March 8, 2000.

H Copies of Bayport Development Grant Deeds with Environmental Deed Restrictions

I Responses to Review Comments, Draft and Draft Final Statutory Five-Year Review Report, Marsh Crust and Former Subtidal Area Materials Remedy

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ACRONYMS AND ABBREVIATIONS

ARAR	applicable or relevant and appropriate requirement
ARRA	Alameda Reuse and Redevelopment Authority
B(a)P	benzo(a)pyrene
bgs	below ground surface
BRAC	Base Realignment and Closure
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	*Code of Federal Regulations*
COC	chemical of concern
DON	Department of the Navy
DTSC	California Environmental Protection Agency, Department of Toxic Substances Control
EDC	Economic Development Conveyance
ELCR	excess lifetime cancer risk
ERA	ecological risk assessment
FISCA	Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex
FOSET	Finding of Suitability for Early Transfer
FS	feasibility study
FY	fiscal year
HHRA	human health risk assessment
HSAA	Hazardous Substances Account Act
HSC	Health and Safety Code
IR	Installation Restoration (Program)
LIFOC	Lease in Furtherance of Conveyance
LUC	Land use control
LUCICP	Land Use Control Implementation and Certification Plan
LUC RD	Land Use Control Remedial Design
NAS	Naval Air Station
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NPL	National Priorities List
NSC	Naval Supply Center
PA	Preliminary Assessment
PAH	polynuclear aromatic hydrocarbon
PBC	Public Benefit Conveyance
PP	Proposed Plan
PRG	Preliminary Remediation Goal
RAB	Restoration Advisory Board
RAO	remedial action objective
RAP	remedial action plan

RD	Remedial design
RI	remedial investigation
ROD	Record of decision
RWQCB	Regional Water Quality Control Board
SARA	Superfund Amendment and Reauthorization Act
SI	Site Investigation
SMP	Site Management Plan
SVOC	semivolatile organic compound
USEPA	United States Environmental Protection Agency

SUMMARY FORM
FIRST STATUTORY FIVE-YEAR REVIEW
MARSH CRUST AND FORMER SUBTIDAL AREA MATERIALS REMEDY

SITE IDENTIFICATION

Site Name: Marsh Crust, Fleet and Industrial Supply Center Oakland, FISCA; and, Marsh Crust and Former Subtidal Area, Alameda Point

EPA ID: 2170023236

Region: IX	**State:** CA	**City/County:** Alameda / Alameda

SITE STATUS

NPL Status: ☐ Final ☐ Deleted ■Other (specify) FISCA is **not** on the National Priorities List. Alameda Point was listed on the NPL in 1999 – however, the NPL listing does not include the subsurface soil contamination layer known as the marsh crust and the former subtidal area.

Remediation Status (choose all that apply): ☐ Under Construction ■ Operating ☐ Complete

Multiple OUs?* ☐ YES ■ NO	**Remediation Completion Date:** Marsh Crust Ordinance No. 2824 was enacted on February 15, 2000; a Covenant to Restrict Use of Property was signed on July 17, 2000; Navy placed Environmental Restrictions in the Deed when it transferred title on July 20, 2000.

Has site been put into reuse? ■YES ☐ NO Portions of these facilities have been redeveloped and/or reused. Other portions are expected to be redeveloped over the next several years.

REVIEW STATUS

Lead agency: ☐ EPA ☐ State ☐ Tribe ■Other Federal Agency : Department of the Navy

Author name: Southwest Division Naval Facilities Engineering Command (SWDIV)

Author title:	**Author affiliation:**

Review period: 05 / 09 / 2005 to 07 / 01 / 2006

Date(s) of site inspection: 05 / 09 / 2005 to 05 / 12 / 2005

Type of review: ☐ Post-SARA ☐ Pre-SARA ☐ NPL-Removal only
■ Non-NPL Remedial Action Site ☐ NPL State/Tribe-lead
☐ Regional Discretion

Review number: ■1 (first) ☐ 2 (second) ☐ 3 (third) ☐ Other (specify) _____

Triggering action:
☐ Actual RA Onsite Construction at OU #____ ☐ Actual RA Start at OU#____
☐ Construction Completion ☐ Previous Five-Year Review Report
■Other (specify): Signing of the Record of Decision, February 02, 2001

Triggering action date: 02 / 02 / 2001 – Non-Construction Remedy – Trigger is ROD Signing Date

Due date *(five years after triggering action date)*: 02 / 02 / 2006

* "OU" refers to operable unit.

SUMMARY FORM (continued)
FIRST STATUTORY FIVE-YEAR REVIEW
MARSH CRUST AND FORMER SUBTIDAL AREA MATERIALS REMEDY

Issues, Recommendations and Follow-up Actions:

FISCA and Alameda Point properties overlying the marsh crust and the former subtidal area materials are being redeveloped in accordance with decision documents and redevelopment plans under the oversight of regulatory agencies. As redevelopment progresses, increased construction activities involving excavations potentially extending to depths where these materials can be encountered, can reasonably be expected. Further, increased land use by new residents and workers is also to be expected. Also, future investigations and assessments could provide additional information on the threshold depths of the marsh crust and the former subtidal area materials currently depicted in land use covenants. On the basis of the observations and findings of this five-year review, unless new information related to human health and environmental risks as currently understood to be potentially posed by the marsh crust and the former subtidal area materials is identified that would no longer require restricting exposure of residents, workers or the environment to these materials, conducting further five-year reviews of the land use controls remedy currently in effect for the marsh crust and the former subtidal area materials is recommended, and it is required by the NCP.

As such, the next Statutory Five-Year Review of the land use controls remedy currently in effect for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point properties needs to be completed within the next five years, or before June 2011.

The DON intends to prepare a Land Use Controls Remedial Design (LUC RD) for the marsh crust and former subtidal area materials in FY 2006. The LUC RD will develop protocols for the enforcement and monitoring of the land use controls remedy implemented for these materials.

Protectiveness Statement:

The land use controls remedy implemented for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point properties currently provides the protectiveness of human health and the environment intended by the decision documents. Exposure of residents, workers and the environment to these materials have been restricted suitably by this remedy, addressing potential threats to human health and the environment possibly posed by these materials. Land use controls in effect clearly identify the permitting requirements and restrictions related to excavations into the marsh crust and the former subtidal area materials. The Catellus Development Corporation's Site Management Plan for the redevelopment of these properties provides guidelines for excavations and construction activities in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment. Technical or physical issues related to the marsh crust and the former subtidal area materials that would be likely to reverse the current conditions and the implemented remedy were not discovered in this five-year review.

Section 1
INTRODUCTION

This report presents the results of the first statutory five-year review of land use controls remedy selected and implemented for the marsh crust and the former subtidal area materials underlying Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA) and Alameda Point (the former Naval Air Station (NAS) Alameda), Alameda, California. This remedy has been described and published in the marsh crust and former subtidal area Remedial Action Plan/Record of Decision (RAP/ROD) dated February 2001. This decision document was approved by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) on February 2, 2001. Figure 1 illustrates the locations of FISCA and Alameda Point.

The purpose of five-year reviews is to evaluate whether a remedy that has been implemented at a site remains protective of human health and the environment at that site. The methods used in assessing the implementation and performance of the selected remedy, as well as the findings and conclusions of these evaluations are documented in five-year review reports.

A five-year review report provides a clear statement as to whether the selected remedy is being protective, or if it is expected to become protective sometime in the future. In the event a five-year review finds deficiencies to exist in remedy implementation or in the performance of the remedy itself which could lead to non-protectiveness of human health and the environment, the five-year review report would identify such issues, and provide recommendations as to how these issues can be resolved. Similarly, if the five-year review finds that assumptions, regulatory requirements and/or analytical methods used to establish cleanup goals for the chemicals of concern at the time of selecting and implementing the remedy have changed during the five years covered by the review, which could lead to non-protectiveness of human health and the environment, then the five-year review would identify such changes and provide recommendations as to how to address such issues. As such, the five-year review report would contain recommendations of specific actions that would provide the means for the remedy to become or to continue being protective.

Five-year reviews are required by statue in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (Title 42 *United States Code* 9601), commonly referred to as the "Superfund," as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. CERCLA §121(c), as amended, states:

> *"If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each five years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented."*

Additionally, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Title 40 *Code of Federal Regulations* [CFR] §300.430(f)(4)(ii) states:

> *"If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use*

and unrestricted exposure, the lead agency shall review such action no less often than every five years after the initiation of the selected remedial action."

The Department of the Navy (DON) has interpreted these regulations as requirements for a five-year review when hazardous substances, pollutants, or contaminants remain at a site above levels that would allow for unlimited use and unrestricted exposure, and, if the RAP/ROD for the site was signed on or after October 17, 1986, when SARA was promulgated. The DON defines 'unlimited use' and 'unrestricted exposure' to mean no restrictions placed on the use of a site.

As such, the DON has undertaken the preparation of this statutory five-year review of the land use controls remedy which has been selected and implemented for the subsurface soil contamination layer known as the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point. This remedy restricts excavating and handling of the marsh crust and the former subtidal area materials. CERCLA requires five-year reviews of remedies that include land use restrictions. Additionally, the RAP/ROD for the marsh crust and the former subtidal area materials was signed in February 2001, after promulgation of SARA.

This is the first five-year review of the remedy implemented for the marsh crust and the former subtidal area materials. The triggering action for this review was the signing of the marsh crust and the former subtidal area RAP/ROD in February 2001. This five-year review was conducted by the DON between May 2005 and May 2006.

This five-year review report is divided into ten sections and nine attachments, as described below.

Section 1 - an introduction into five-year reviews in general, and to this five-year review in particular.

Section 2 - a chronology of events related to marsh crust and former subtidal area materials evaluations and remedy selection.

Section 3- marsh crust and former subtidal area materials background information, including physical setting, land and resource use, history of contamination, initial response, and the basis for taking remedial action.

Section 4- remedy selected and implemented for the marsh crust and former subtidal area materials.

Section 5 - progress made since the last five-year review.

Section 6- typical activities performed as part of a five-year review process, and the findings of this five-year review, including community involvement, the results of document and data review, site inspection, and interviews.

Section 7 - technical assessment of the remedy implemented for the marsh crust and former subtidal area materials.

Section 8 - issues identified, as well as conclusions, and recommendations as to how the issues can be resolved.

Section 9- protectiveness statement for the remedy implemented for the marsh crust and former subtidal area materials.

Section 10 - discussion of the next five-year review.

The following attachments are appended in support of and for completeness of this five-year review:

Attachments

A Listing of Marsh Crust and Former Subtidal Area Materials Related Documents Included In This First Five-Year Review

B Site Inspection Form, First Five-Year Review, Marsh Crust and Former Subtidal Area Materials Remedy

C Site Photographs Taken During Site Inspection on May 10, 2005 and Aerial Photograph of FISCA and Alameda Point Overlying the Marsh Crust and the Former Subtidal Area dated October 2004, First Five-Year Review, Marsh Crust and Former Subtidal Area Materials Remedy

D Interview Documentation Form, First Five-Year Review, Marsh Crust and Former Subtidal Area Materials Remedy

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- "Covenant to Restrict Use of Property (Environmental Restriction), Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, and Alameda Naval Air Station East Housing, Alameda, California" between the City of Alameda or Alameda Reuse and Redevelopment Authority and the California Environmental Protection Agency, Department of Toxic Substances Control, dated July 17, 2000, recorded on July 20, 2000; and,
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Section 2
CHRONOLOGY OF EVENTS

Important and relevant information on environmental investigation, remedial planning, remedial action events and the dates of these events related to the marsh crust and former subtidal area materials are listed below in chronological order. These events typically include environmental assessments, preparation of decision documents, and remedial actions.

CHRONOLOGY OF EVENTS

MARSH CRUST AND FORMER SUBTIDAL AREA MATERIALS

Event	Date
The properties occupied by FISCA, Alameda Point, and surrounding area exists as undeveloped marshlands and tidal flats along the fringe of San Francisco Bay.	Prior to 1920's
The marshlands are covered with imported fill comprising sands and clays of unknown origin.	1920's - 1930's
The developed Alameda Facility area is used as a commercial airport.	1920's - 1940's
The Army acquires the western tip of Alameda Island from the City of Alameda and begins construction.	1930
The Navy acquires title to the land from the Army and begins building Naval Air Station (NAS) Alameda in response to the military buildup in Europe before World War II. This construction involves filling the natural tidelands, marshes, and sloughs between the Oakland Inner Harbor and the western tip of Alameda Island.	1936
The Navy acquires more land west of the installation after the U.S. enters World War II.	1941
US Government purchases the Alameda Facility property for use as a depot.	1941 (Alameda Facility) and 1966 (Alameda Annex)
After the end of World War II, the NAS Alameda continued its primary mission of providing facilities and support for fleet aviation activities. While it operated as an active naval base, the installation provided berthing for Pacific Fleet ships and was a major center of naval aviation.	1945
Command of Alameda Facility property transferred to Naval Supply Center (NSC) Oakland.	1964
Alameda Annex property transferred to NSC Oakland.	1980
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as 'Superfund' is promulgated.	1980
Department of the Navy (DON) begins investigating sites under its Installation Restoration (IR) Program.	1980's
Superfund Amendments and Reauthorization Act (SARA) amends CERCLA.	1986
A Site Investigation (SI) is conducted for Alameda Annex.	1987
A Preliminary Assessment (PA) is conducted for Alameda Annex.	1988
NAS Alameda is identified for closure under Base Realignment and Closure (BRAC).	1993
Final Remedial Investigation (RI) report for FISCA is issued. Soil samples were collected during the RI from the marsh crust in and around Site IR02.	January 1996
NAS Alameda issues a History & Geology Fact Sheet.	June 1996

CHRONOLOGY OF EVENTS

MARSH CRUST AND FORMER SUBTIDAL AREA MATERIALS

Event	Date
NAS Alameda ceases all naval operations, in preparation for returning the land to the City of Alameda.	April 30, 1997
FISCA is closed under the BRAC Act of 1990.	September 30, 1998
Draft Finding of Suitability for Early Transfer (FOSET) of FISCA to the City of Alameda is issued. The FOSET states that the property transfer will include several interim measures to prevent unacceptable exposure to risks identified for the property, including requiring contractors excavating marsh crust soils to prepare soil management plans which describe how excavated soils will be stored, tested, and disposed of.	December 1999
Remedial Investigation (RI) Reports are issued for Alameda Point OU-1, OU-2 and OU-3, which overly the marsh crust and the former subtidal area.	1999
The City of Alameda issues its Marsh Crust Excavation Ordinance No. 2824, providing standards and procedures to be followed regarding excavation and pile driving in the marsh crust area.	February 15, 2000
Final feasibility study (FS) report for the 'Marsh Crust at Alameda Annex and Alameda Point' is issued.	March 31, 2000
DTSC prepares a Removal Action Workplan for Marsh Crust at East Housing.	May 2000
DON issues its Proposed Plan (PP) for the marsh crust at 'Alameda Annex and Alameda Point'. The Navy states in the PP that its preferred remedial alternative is Land Use Controls that would require that proper procedures are followed to excavate soil that would reach the underlying marsh crust and former subtidal area. The PP also states that the DON would conduct a review after 5 years of implementing this remedy to ensure compliance with the land use controls, as required by CERCLA; and, that the land underlain by the marsh crust and the former subtidal area could be available for residential or industrial use after this remedy is implemented.	June 2000
The DON and the Alameda Reuse and Redevelopment Authority (ARRA) enter into a 'Lease in Furtherance of Conveyance (LIFOC) for Former Naval Air Station Alameda.' The LIFOC addresses Economic Development Conveyance (EDC) parcels, Public Benefit Conveyance (PBC) parcels, federal (FED) parcels, and three non-EDC, -PBC, or -FED parcels. Potential digging restrictions subject to negotiation with the ARRA, institutional controls, and/or land use restrictions are placed on most of the parcels.	June 06, 2000
The DON and the City of Alameda execute a 'Quitclaim Deed and Environmental Restrictions Pursuant to California Civil Code Section 1471 for FISC Alameda' wherein the DON transfers FISCA to the City of Alameda with environmental restrictions placed on the use of the property. The City of Alameda agrees that it will comply with the City of Alameda Ordinance No. 2824 regarding excavation into the marsh crust and subtidal zone at the former NAS Alameda, the Alameda Facility, and the Alameda Annex.	July 17, 2000
The DON and the ARRA execute a 'Quitclaim Deed and Environmental Restrictions Pursuant to California Civil Code Section 1471 for East Housing Portion of NAS Alameda,' wherein the DON transfers NAS Alameda property to the ARRA with environmental restrictions placed on the use of the property. The ARRA agrees that it will comply with the City of Alameda Ordinance No. 2824 regarding excavation into the marsh crust and subtidal zone at the former NAS Alameda, the Alameda Facility, and the Alameda Annex.	July 17, 2000

CHRONOLOGY OF EVENTS

MARSH CRUST AND FORMER SUBTIDAL AREA MATERIALS

Event	Date
The ARRA and the DTSC execute a 'Covenant to Restrict Use of Property (Environmental Restrictions), Fleet and Industrial Supply Center Oakland, Alameda Facility and Alameda Annex, and Alameda Naval Air Station East Housing, Alameda, California.' Use of the property is restricted to protect human health and the environment. Covenant requires that its restrictions be incorporated into each and all deeds, leases, and subleases of any portion of the property.	July 17, 2000
The DON issues its Quarterly Report for Alameda Facility and Alameda Annex. The report provides the activities completed for the property in connection with the marsh crust investigations.	September – November 2000
The DON issues its Draft Final Site Management Plan for FISCA, describing the marsh crust and related issues.	November 09, 2000
The DON and the State of California sign the marsh crust and former subtidal area Remedial Action Plan/Record of Decision (RAP/ROD). The RAP/ROD states that based on the results of the remedial investigations conducted, the Navy and the DTSC, with the concurrence of the USEPA and the Regional Water Quality Control Board (RWQCB), have selected land use controls for the marsh crust and the former subtidal area at FISCA and at Alameda Point. According to the RAP/ROD, the selected remedy addresses principal threats by restricting future use occupants from excavating into the marsh crust and deposits from the former subtidal area. Proper procedures would be required to be used to ensure that workers are not exposed and that the contaminated materials brought to the surface are properly disposed of. The RAP/ROD further states that the remedy of institutional controls consists of three tiers of land use controls: Environmental Restrictions in Deed with the City of Alameda (July 17, 2000); Covenant to Restrict Use of Property between the DTSC and the City of Alameda (July 17, 2000); and the Marsh Crust Ordinance enacted by the City of Alameda (February 15, 2000).	February 02, 2001
The USEPA issues its letter to the DON agreeing with the selection of Land Use Controls as the established remedy for marsh crust at Alameda Annex and for the marsh crust and former subtidal area at Alameda Naval Air Station.	February 13, 2001
A Site Management Plan (SMP) is issued by Catellus Development Corporation, the developer of FISCA and the Alameda Point East Housing Area. The Catellus SMP, issued under City of Alameda Ordinance No. 2824, provides guidelines and the means for redevelopment of these sites in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment. Ordinance No. 2824 regulates excavations into the marsh crust and handling of materials excavated from below the marsh crust threshold depths. Regulatory oversight of implementing this SMP would be provided by the DTSC and the City of Alameda.	April 23, 2002
DON issues its 'Final Site Management Plan Update for Alameda Annex'. It states that the final RAP/ROD for the marsh crust at Alameda Annex and Alameda Point was signed in February 2001, and that the remedy is Land Use Controls (LUCs) including environmental deed restrictions, a covenant to restrict use of the property and City Ordinance 2824 that requires excavation permits and soil management plans for excavations to depths beyond the threshold depths identified in the ordinance.	January 2005
First Five-Year Review	May 2005 – April 2006
Site Inspection for first five-year review	May 10, 2005
Document and data review for first five-year review	May 10 – June 24, 2005

CHRONOLOGY OF EVENTS

MARSH CRUST AND FORMER SUBTIDAL AREA MATERIALS

Event	Date
Interviews for first five-year review	May 10 – June 24, 2005
Draft first five-year review report of the marsh crust and former subtidal area materials remedy is issued for review and comments	August 2005
Draft Final first five-year review report of the marsh crust and former subtidal area materials remedy is issued for review and comments	March 2006
Final first five-year review report of the marsh crust and former subtidal area materials remedy is issued	April 2006
Fact Sheet for the first five-year review report of the marsh crust and former subtidal area materials remedy is issued	May 2006
Public Notice for the first five-year review report of the marsh crust and former subtidal area materials remedy is issued	May 2006

Section 3
SITE BACKGROUND

FISCA and the former NAS Alameda are located on Alameda Island, in the City of Alameda. NAS Alameda (now Alameda Point) is located on the western end of Alameda Island, adjacent to and west of FISCA (Figure 1). NAS Alameda ceased its operations on April 30, 1997. FISCA was closed on September 30, 1998.

This section presents background information, including physical setting, land and resource use, history of contamination, initial response, and the basis for taking remedial action in response to chemical compounds reported in the subsurface sediment layer known as the marsh crust and the former subtidal area underlying FISCA and Alameda Point properties at the time when the marsh crust and the former subtidal area RAP/ROD was signed. The discussions and information presented in this section include major marsh crust and former subtidal area assessment activities conducted prior to and following the signing of the marsh crust and the former subtidal area RAP/ROD with the intent of providing a basis for comparing the performance of the remedy implemented for the marsh crust and the former subtidal area materials with the conditions potentially posed by the marsh crust and the former subtidal area materials that the remedy was intended to mitigate.

3.1 PHYSICAL SETTING

A thin, deeply buried layer of historically contaminated sediments known as the "marsh crust" and the "former subtidal area" is found underlying much of the FISCA and Alameda Point properties. Subsurface investigations conducted at these properties for various environmental assessments have encountered the marsh crust and the former subtidal area materials over a large areal extent, believed to exist throughout these properties in a reasonably predictable, planar zone, but may not exist as a continuous layer because of the presence of tidal channels and other phenomena affecting the original deposition.

This buried layer is believed to have been formed during the late 1800s to 1920s, when manufactured gas plants and an oil refinery operating near the future locations of FISCA and Alameda Point are thought to have discharged petroleum waste to adjacent marshlands. The discharge is believed to have been rich in semivolatile organic compounds, including polycyclic aromatic hydrocarbons (PAHs). The waste appears to have spread over much of the marsh surface through tidal actions, leaving a thin layer of contaminated sediment over the area that would later become FISCA and Alameda Point. Sediments dredged during improvement of the Oakland Inner Harbor and surrounding San Francisco Bay have been placed as areal fill on the marsh surface beginning in 1887, encapsulating the former subtidal area and the marsh crust underneath.

The historical areal fill that has formed the current FISCA property is present to depths ranging from about 10 feet bgs in the northern portions of the property to 20 feet bgs in its southern portions. The marsh crust, which underlies this areal fill, has been observed during various investigations as an organic-rich peat and grass layer about 2 to 6 inches thick. Immediately below the marsh crust layer is the Bay Mud layer, which underlies the entire FISCA property.

Alameda Point has been constructed by placing areal fill not only on the former marshlands, but also beyond the limits of the former marshlands into the subtidal area of San Francisco Bay. The areal fill has been placed from 1887 to as late as 1975. The thickness of this fill varies as a result of natural variation in the depth of the estuary before filling activities have started. As such, the areal fill is about 4 feet thick at the eastern edge, and about 20 feet thick at the western edge of Alameda Point. Underlying this fill is the marsh crust in the eastern portion and the former subtidal area in the western portion of Alameda Point. The former subtidal land is rich in organic content, and it has been mapped as 'tidal flats' in an 1856 U.S. Coast and Geodetic Survey. This highly organic layer appears to be comprised of decayed organic matter incorporated into the mineral soil, typically from plant detritus (such as decayed stems and leaf skeletons or humus) and algae. The Bay Mud underlies both the marsh crust and the former subtidal land beneath Alameda Point.

3.2 LAND AND RESOURCE USE

Until the 1920s, FISCA and Alameda Point, as well as the surrounding area existed as undeveloped marshlands and tidal flats along the fringe of San Francisco Bay. Before 1930, at least two large industrial sites (an oil refinery and a borax processing plant) were located on the western tip of Alameda Island. Several industries were located on the northern side of Oakland Inner Harbor, including two manufactured gas plants. Land use has been industrial since the land was created using imported fill between 1887 and 1939.

FISCA was zoned as a general industrial (manufacturing) district with a special government-combining overlay. The Oakland Inner Harbor, which is north of FISCA, contains a ferry terminal, shipyards, several marinas and yacht clubs. The area east of FISCA encompasses commercial and industrial properties. The area south of FISCA consists of residential developments, including housing, elementary schools, a middle school, and the College of Alameda. The area south and west of FISCA is occupied by Alameda Point.

Alameda Point is currently a mixed-use area with industrial and office space; land uses at Alameda Point formerly included military operations and family housing. The Oakland Inner Harbor, north of the facility, contains a ferry terminal, shipyards, several marinas and yacht clubs. The area east of the facility encompasses FISCA. The area southeast of the facility consists of residential developments, including housing, elementary schools, a middle school, and the College of Alameda. San Francisco Bay lies to the west of the facility.

The Oakland Inner Harbor, which is an extension of San Francisco Bay, is adjacent to the northern boundary of FISCA and Alameda Point. The shoreline of Oakland Inner Harbor is almost entirely modified by human activity, and a variety of industries are located along its entire length (including port facilities, shipbuilding and repair facilities, sand and gravel off-loading areas, and marinas).

Aquatic areas are present along the northern portion of FISCA, bordering the Oakland Inner Harbor. Although harbor seals and birds, including California brown pelicans,

double-crested cormorants, and several species of gulls, have been observed in the inner harbor area, these species do not nest or feed at FISCA because it offers no supporting habitat. Similarly, of the wildlife species in the San Francisco Bay Area that are classified as endangered or threatened by either the state or federal government, none nests or feeds at FISCA.

Alameda Point is almost entirely modified by human activity, and a variety of industries and activities are located through the facility (including port facilities, aircraft repair facilities, office buildings, runways, and landfills). Alameda Point, including contiguous and noncontiguous properties, such as constructed breakwaters, contains nine terrestrial and aquatic wildlife habitats. Major habitat types at Alameda Point include: open water areas; estuarine intertidal emergent wetlands; paved runway areas; non-native grassland; ruderal upland vegetation; disturbed areas; beach, urban, and ornamental landscapes; and riprap. Several special status species have been identified that occur or are expected to occur at Alameda Point.

FISCA underwent base closure on September 30, 1998. The Navy transferred title to the property to the City of Alameda on July 17, 2000 pursuant to an Economic Development Conveyance conducted as an early transfer under CERCLA Section 120 (h)(3). NAS Alameda ceased operations on April 30, 1997 and has undergone base closure on September 30, 1998. It is in the process of being released for public use upon completion of closure under the BRAC of 1998.

3.3 HISTORY OF CONTAMINATION

From the late 1800s until the 1920s, two gas plants and an oil refinery were located near the present locations of FISCA and Alameda Point. These facilities are believed to have discharged petroleum products and wastes and, possibly, CERCLA hazardous substances to adjacent marshlands during their operation. The discharges were probably rich in PAHs. The waste appears to have migrated over much of the surface of the surrounding marsh and deposited on the marsh surface through tidal actions, leaving a layer of contaminated sediment under the 143-acre area that is now FISCA and the eastern portion of the 2,675-acre area that is now Alameda Point. This layer is now known as the marsh crust. Further to the west, beneath Alameda Point, the waste has been deposited on tidal flats, now known as the former subtidal area. Sediments that have been dredged from the Oakland Inner Harbor and surrounding San Francisco Bay have been placed as areal fill on these materials from as early as 1887 to as late as 1975, encapsulating the former subtidal area and marsh crust.

3.4 INITIAL RESPONSE

The Proposed Plan (PP) identifying the preferred remedy for the marsh crust and former subtidal area materials underlying FISCA and Alameda Point was made available to the public in June 2000. The final RAP/ROD for the marsh crust and the former subtidal area was signed in February 2001, and it selected land use controls as the remedy for the marsh crust and the former subtidal area materials. In accordance with the California

Environmental Quality Act, the DTSC conducted an Initial Study for the remedy selected for the marsh crust and the former subtidal area materials. A proposed Negative Declaration was also made available through the information repositories. The notice of availability of the PP, the draft RAP/ROD and the Negative Declaration was published in the Oakland Tribune and the Alameda Times on June 20, 2000. A public comment period was held from June 20 to July 20, 2000. A public meeting was held on June 29, 2000. At the meeting, representatives from the DON, DTSC, USEPA, and RWQCB answered questions about the PP and the preferred alternatives. These activities fulfilled the requirements of the Hazardous Substances Account Act (HSAA) (Health and Safety Code (HSC) Section 25356.1), CERCLA community participation requirements of Sections 113(k)(2)(B)(i-v) and 117(a)(2), and the NCP, 40 CFR Section 300.430(0(3).

3.5 BASIS FOR TAKING ACTION

A human health risk assessment (HHRA) conducted as part of the Remedial Investigation (RI) for the marsh crust and the former subtidal area materials concluded that at the depths the marsh crust is now located beneath FISCA, these materials do not pose a risk to human health. No chemicals of concern (COCs) were identified in the HHRA for the marsh crust, because no completed exposure pathways were deemed to exist. However, it was considered that an exposure pathway would exist for workers or residents if contaminated marsh crust materials were brought to the surface or disposed of in an uncontrolled manner.

At Alameda Point, an exposure pathway was deemed to possibly exist by workers to the marsh crust and subtidal area materials during construction of building foundations and utility work. In addition, if these materials were brought to the surface or disposed of in an uncontrolled manner, workers or residents could be exposed.

The DON estimated risks for the future scenario of excavation and uncontrolled distribution of marsh crust materials on the surface. Risks were estimated by comparing benzo(a)pyrene (B(a)P) concentrations in the marsh crust materials with the USEPA Region 9 preliminary remediation goal (PRG) value for residential land use. B(a)P concentrations were used for the comparison because of the compound's potential toxicity. Based on these comparisons, excess lifetime cancer risks (ELCR) of $2x10^{-3}$ were estimated for individual marsh crust borehole samples at FISCA, and ELCR of $3x10^{-4}$ were estimated for individual marsh crust borehole samples at Alameda Point. These levels of risk were determined to be unacceptable for unrestricted use.

Several ecological risk assessments (ERAs) were conducted to evaluate whether chemical compounds reported in the marsh crust and former subtidal area materials underlying FISCA and Alameda Point would potentially cause adverse ecological impacts to the environment. The terrestrial ERA found no potential risks to terrestrial receptors at FISCA because FISCA has (1) limited and unsuitable habitat, (2) no endangered species that feed or nest on the facility, (3) a scarcity of mammalian receptors, and (4) the marsh crust is encapsulated at some depth below the existing ground surface with limited potential for adverse effects to terrestrial biota.

Although wildlife habitats were known to be located at Alameda Point, excavation of the marsh crust and the former subtidal area materials in the future was not expected to create an ecological risk, because the marsh crust and former subtidal area materials are at depths that would prevent a completed exposure pathway for ecological receptors, and because development and construction would generally not be conducted in established habitats, but rather in areas already modified by human activity, such as port facilities, office buildings, and runways, which comprise most of Alameda Point.

On the basis of these considerations, and on the basis that the possibility that future construction could raise contaminated materials from the former subtidal area and marsh crust to the surface existed, response actions in the form of land use controls that would prevent potential future uncontrolled excavation and placement of marsh crust and former subtidal area materials on the surface where they may pose unacceptable risk to human health or the environment, was deemed to be necessary to protect the public health from actual or threatened releases of hazardous substances into the environment.

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Section 4
REMEDIAL ACTIONS

This section provides discussions of remedial action implementation history for the marsh crust and the former subtidal area materials. It presents relevant marsh crust and former subtidal area remedy selection related activities beginning with the signing of the RAP/ROD for the marsh crust and the former subtidal area materials to the present, and includes discussions of remedy selection and implementation, remedy performance, and the current status of the remedy.

4.1 SELECTED REMEDY

A HHRA conducted as part of the RI for the marsh crust and the former subtidal area materials concluded that at the depths the marsh crust is now located beneath FISCA, these materials do not pose a risk to human health. No COCs were identified in the HHRA for the marsh crust, because no completed exposure pathways were deemed to exist. However, it was considered that an exposure pathway would exist for workers or residents if contaminated marsh crust materials were brought to the surface or disposed of in an uncontrolled manner.

At Alameda Point, an exposure pathway was deemed to possibly exist for workers exposed to the marsh crust and subtidal area materials during construction of building foundations and utility work. In addition, workers or residents could be exposed if these materials were brought to the surface or disposed of in an uncontrolled manner.

Excess lifetime cancer risks of $2x10^{-3}$ and $3x10^{-4}$ were estimated for marsh crust samples collected from beneath FISCA and Alameda Point, respectively. These levels of risk were determined not to be acceptable for unrestricted use of these properties.

On the basis of these findings, it was concluded that hazardous substances were present in the marsh crust underlying FISCA, and in the marsh crust and former subtidal area materials underlying Alameda Point. However, these substances were considered to be low-level wastes because of their low concentrations and toxicity.

In consideration of the possibility that future construction related activities could raise contaminated materials from the marsh crust and the former subtidal area to the surface, the remedial action objective (RAO) for the marsh crust and the former subtidal area materials was identified in the marsh crust and the former subtidal area RAP/ROD as preventing potential future uncontrolled excavation and placement of marsh crust and former subtidal area materials on the surface, where they may pose unacceptable risk to human health and the environment.

In accordance with these findings and conclusions, and, in accordance with the RAO, CERCLA requirements, BRAC program goals, and the future land use plans for the FISCA and Alameda Point properties (a mixed reuse of residential, commercial, and industrial), the DON and the DTSC, with the concurrence of the RWQCB, selected land use controls as the remedy for the marsh crust and former subtidal area materials underlying these properties.

As such, the selected remedy would prohibit excavation into the marsh crust and former subtidal area materials, unless proper precautions are first taken to protect

worker health and safety and to ensure that excavated materials are disposed of properly. These land use restrictions consisting of excavation restrictions and permitting requirements would be implemented through a land use covenant between DTSC and the City of Alameda, Environmental Restrictions in Deed imposed by the DON, and the City of Alameda Marsh Crust Excavation Ordinance No. 2824 in a manner that would provide overall protection of human health and the environment.

4.2 REMEDY IMPLEMENTATION

No active engineering or construction would be required to implement this remedy. Roles and responsibilities for implementing and enforcing the land use controls remedy will be documented in a Land Use Control Remedial Design (LUC RD) to be prepared by the DON in FY 2006. The LUC RD will address the following elements:

- Descriptions of the marsh crust and former subtidal area materials.
- A map showing the locations and the approximate size of FISCA and Alameda Point overlying these materials.
- The land-use control objectives and restrictions stated in the RAP/ROD.
- The specific legal mechanism that will be used to achieve the land use control objectives and restrictions.
- The required frequency and nature of periodic inspections of the areas overlying the marsh crust and former subtidal area materials.
- Identification of the entities responsible for implementation of these monitoring and inspections.
- Methods to be used to periodically certify compliance with the land use controls remedy upon completion of inspections, i.e., five-year reviews.
- Procedures for notifying the DON and signatories to the FFSRA in the event of a failure to comply with land use restrictions.

The following would be involved in implementing the selected remedy:

Environmental Restrictions in Deed. The DON has included Environmental Restrictions addressing marsh crust land use controls pursuant to California Civil Code Section 1471 in the deeds transferring title to FISCA and the former East Housing portion of the former NAS Alameda to the City of Alameda on July 17, 2000. The Environmental Restrictions require that the City of Alameda and its transferees comply with City of Alameda Ordinance No. 2824 passed on February 15, 2000, when excavating below specified threshold depths or when excavating with DTSC approval if the Ordinance is repealed or DTSC determines that the Ordinance does not comply with the Covenant to Restrict Use of Property (discussed below). These Environmental Restrictions are to be interpreted in a manner that is consistent with and does not conflict with the Covenant to Restrict Use of Property between DTSC and the City of Alameda. These Environmental Restrictions (1) run with the land; (2) are for the

benefit of, and enforceable by the DON; (3) are binding upon future owners and occupants of the property; and (4) shall be enforced by the DON when necessary and appropriate. The Deed provides that a failure to enforce the Environmental Restrictions in the Covenant between DTSC and the City of Alameda shall not preclude the DON from enforcing the equivalent Environmental Restrictions in the Deed. In the future, deeds transferring title to former DON properties included in the marsh crust and subtidal area of Alameda Point are to contain these environmental restrictions, as appropriate.

Covenant to Restrict Use of Property. On July 17, 2000, DTSC and the City of Alameda entered into a Covenant to Restrict Use of Property (Covenant) that includes Environmental Restrictions addressing marsh crust land use controls pursuant to California Civil Code Section 1471 and HSC Section 25355.5. The Environmental Restrictions prohibit excavation below specified threshold depths, except in compliance with the City of Alameda Ordinance No. 2824 passed on February 15, 2000 (see description below) or with DTSC approval if the Ordinance is repealed or DTSC determines that the Ordinance does not comply with the Covenant. The Covenant covers FISCA and the former NAS Alameda East Housing Area and contains Environmental Restrictions that (1) run with the land; (2) are for the benefit of, and enforceable by the DTSC; and (3) are binding upon future owners and occupants of the property. In the future, transfers of former DON properties included in the marsh crust and subtidal area of Alameda Point are to require a similar covenant.

Marsh Crust Ordinance. The City of Alameda has enacted City of Alameda Ordinance No. 2824 passed on February 15, 2000 that prohibits engaging in any excavation below specified threshold depths on former DON property without an excavation permit and without taking proper measures to ensure that workers are not unduly exposed and that all contaminated material brought to the surface is properly disposed of (Figure 2). The City of Alameda is to directly implement and enforce Ordinance No. 2824. If this ordinance is repealed in the future, or if DTSC has made a written determination with 30 days prior written notice to the City of Alameda that Ordinance No.2824 does not comport with the intent of the DTSC/City of Alameda covenant, then a permitted excavation may be conducted only in accordance with written approval by DTSC. The permittee's application for such an approval would be submitted to DTSC and will comply with the permit application requirements of the last version of Ordinance No. 2824 or such other requirements as DTSC may specify.

In summary, land use controls selected as the remedy for the marsh crust and the former subtidal area materials is intended to restrict excavation into these materials without the required permits and without proper measures to dispose of excavated materials, excluding those areas requiring remediation of soil above the marsh crust and the subtidal area. The properties of FISCA and Alameda Point would thus be available for either residential use, industrial use, or both.

This remedial action was intended to control risks potentially posed by excavations that could bring marsh crust and subtidal area materials to the surface, where they could

remain as a source of exposure and could pose an unacceptable risk to human health or the environment. Under current conditions, the marsh crust and former subtidal area materials in their existing locations were not deemed to pose a risk to human health or the environment because of their depth and because they are buried beneath areal fill. The selected remedy meets the RAO, except for completion of the Land Use Controls Implementation and Certification Plan (LUCICP), now the LUC RD, because land use controls would prevent exposure to marsh crust and former subtidal area materials that may pose a threat to human health by prohibiting excavation of these materials below a certain depth without an excavation permit. Also, the remedy requires that proper health and safety and disposal procedures be followed when handling excavated marsh crust and former subtidal area materials. Land use controls contain mechanisms and procedures which allow the DTSC to enforce them.

Lease in Furtherance of Conveyance. On June 6, 2000, the DON and the Alameda Reuse and Redevelopment Authority (ARRA) entered into a Lease in Furtherance of Conveyance (LIFOC) for Former Naval Air Station Alameda. The LIFOC addresses Economic Development Conveyance (EDC) parcels, Public Benefit Conveyance (PBC) parcels, federal (FED) parcels, and three non-EDC, -PBC, or -FED parcels. Potential digging restrictions subject to negotiation with the ARRA, institutional controls, and/or land use restrictions are placed on most of the parcels.

Section 5
PROGRESS SINCE THE LAST FIVE-YEAR REVIEW

This is the first five-year review of the remedy selected and implemented for the marsh crust and former subtidal area materials underlying FISCA and Alameda Point.

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Section 6
FIVE-YEAR REVIEW PROCESS AND FINDINGS

This section discusses the five-year review process undertaken for the remedy implemented for the marsh crust and former subtidal materials underlying FISCA and Alameda Point, and presents its findings. This five-year review was conducted according to procedures described in DON's May 21, 2004 policy for conducting five-year reviews for DON sites, and in accordance with procedures described in EPA's June 2001 guidance for conducting five-year reviews.

6.1 FIVE-YEAR REVIEW ADMINISTRATIVE COMPONENTS

The lead agency responsible for this five-year review was the DON. The CDM/Brown and Caldwell Team provided technical and community relations support to the DON.

During April and May 2005 the DON, CDM, and Brown and Caldwell established a team and schedule for the five-year review of the marsh crust and the former subtidal area materials remedy. The components of this five-year review included:

- Community involvement;
- Review of relevant documents, data, reports, and agreements related to the marsh crust and former subtidal area materials remedy;
- Review of federal and state applicable or relevant and appropriate requirements (ARARs) cited in the marsh crust and former subtidal area RAP/ROD;
- Site visits and inspection of FISCA and Alameda Point properties overlying marsh crust and former subtidal area materials;
- Interviews with staff of the DON, DTSC, Catellus, City of Alameda, and the Restoration Advisory Board (RAB); and,
- Preparation of this five-year review report.

The schedule for overall completion of this first five-year review for the remedy implemented for the marsh crust and former subtidal area materials extends through May 2006.

6.2 COMMUNITY INVOLVEMENT

Community interest in the remedy implemented for the marsh crust and the former subtidal area materials has been extensive, as can be judged from the many comments received on this subject by the DON from the community during the preparation of the RAP/ROD for the marsh crust and the former subtidal area materials. At that time the community had expressed concern as to the enforceability of the remedy and identification of specific threshold depths for the marsh crust and the former subtidal area materials. The DON responded that it will be able to enforce the Environmental Restrictions in Deed, and the City of Alameda and the DTSC will be responsible for enforcing the Covenant to Restrict Use of Property. Together with the third component of the remedy, Marsh Crust Excavation Ordinance No. 2824, these controls would provide three 'tiers' of protection to human health and the environment. The DON also responded

that threshold depths would be calculated for each excavation project and will vary, depending on the location of the project.

Another concern expressed by the community was that additional investigations of the depth of the marsh crust and its thickness seemed to be warranted. The DON responded that the remedy selection decision for the marsh crust would not be significantly enhanced by additional data collection. The DON stated that protection of human health and the environment would be better served by implementation of the land use controls rather than by additional investigations, and added that in the event new information was discovered that would indicate that the land use controls are no longer protective (for example, through the 5-year review process), the remedy could be re-evaluated and upgraded.

The community expressed a concern as to the assessments related to the source of and risks from marsh crust contamination. The DON responded that after extensive study and analyses, it was confident that the source of the marsh crust contamination was historical deposition of effluent that contained PAHs and other industrial wastes released to marsh waters from the late 1800s until the 1920s. These wastes were apparently deposited in the marsh before the DON first occupied the area and before the wastes were entombed under sediment and other materials dredged from the Oakland Inner Harbor and San Francisco Bay.

A major goal of the DON's community relations program during the course of investigations and remedy selection process it has conducted for the marsh crust and the former subtidal area materials has been to keep the local community in Alameda informed of its activities. To that affect, it has met regularly with the RAB and the BCT and provided them with the progress being made on the project. In June 2000, the DON issued its Proposed Plan describing its preferred remedy for the marsh crust and the former subtidal area materials, and followed the Proposed Plan by issuing its RAP/ROD in February 2001 describing the selected remedy.

The DON will place public notices in the local Alameda newspapers announcing the preparation of this five-year review of the remedy implemented for the marsh crust and the former subtidal area materials. The DON will also prepare a fact sheet on this five-year review.

6.3 DOCUMENT AND DATA REVIEW

As part of this five-year review, Brown and Caldwell conducted reviews of numerous documents related to the remedy implemented for the marsh crust and the former subtidal area materials. These reviews focused primarily on documents that provided an insight into the technical and regulatory analyses and considerations which led to remedy selection and insight into the implementation of this remedy. These documents contained site-specific data which were also reviewed as part of this task.

The RI and FS reports, as well as the RAP/ROD for marsh crust and former subtidal area materials provided data and information on the human health and ecological risk

assessments conducted for the marsh crust and the former subtidal area materials, identified the RAOs as well as the ARARs for the marsh crust and the former subtidal area materials, described the selection process of the final remedy and the basis for that selection, and implementation of the remedy.

Numerous agreements made between the DON and the City of Alameda as well as the DTSC provided information on the regulatory oversight provided for this remedy selection process as well as an understanding of the land use restrictions placed on the future use of the properties overlying the marsh crust and the former subtidal area materials with respect to the human health concerns reported for exposure to the marsh crust and the former subtidal area materials if these materials were to be handled without adequate protection and controls. These include such documents as the Quitclaim Deed between the Navy and the City of Alameda, the covenant between the City of Alameda and DTSC, the LIFOC between the Navy and the ARRA, and the City of Alameda Ordinance No. 2824 (Marsh Crust Excavation Ordinance).

Collectively, these documents and some others (in combination with personal interviews) provided information to this five-year review which allowed developing a chronology of events, and an understanding of the involvement of the regulators and the community in the remedial action selection and implementation process for the marsh crust and the former subtidal area materials.

Attachment A provides a listing of relevant marsh crust and the former subtidal area materials related documents included in this five-year review. Data review is discussed in Section 7 of this five-year review report.

6.4 SITE VISIT AND INSPECTION

On May 10, 2005, representatives of the DON and Brown and Caldwell physically and visually inspected FISCA and Alameda Point properties overlying the marsh crust and the former subtidal area materials. A representative of Catellus Corporation joined the site inspection team for a portion of the FISCA inspection.

Conditions during the site visit were favorable, with clear weather and no precipitation. Most of FISCA and Alameda Point were accessible to the site inspection team. The portion of Alameda Point which essentially comprised the aircraft landing strips was not entered due to existence of habitats of numerous bird species.

The purpose of this site inspection was to assess the protectiveness of the land use controls remedy implemented for the marsh crust and the former subtidal area materials.

No significant issues had been identified following the implementation of the remedy for the marsh crust and former subtidal area materials and none were identified at this site inspection. Visual examination of the FISCA and Alameda Point properties did not reveal discernible signs of soil erosion or unexplained excavations into the marsh crust and former subtidal area materials. Construction activities by the redevelopment contractor Catellus were well underway within a site located on FISCA (Site IR02). Excavations for a storm water pumping station at this site had extended into the marsh crust materials.

Catellus showed the permits it had obtained for that excavation, in compliance with LIFOC and Marsh Crust Ordinance No. 2824 requirements, and discussed its plans for characterizing the excavated materials that had been stockpiled on the site prior to their off-site disposal at regulated facilities. The site appeared to be well secured by fencing surrounding it; vehicular and pedestrian access into the site was further restricted by Catellus as part of its site control during its ongoing construction activities.

Land use controls that are in place for the marsh crust and the former subtidal area materials prohibit uncontrolled and non-permitted excavations of these materials. No activities were observed that would have violated these land use controls. An interview with DTSC, a visit to and interview at Alameda City Hall, and review of environmental restrictions placed on deeds of Bayport properties, formerly East Housing Area, confirmed that these land use controls are currently in effect.

Attachment B contains the site inspection form providing findings of FISCA and Alameda Point site inspections conducted on May 10, 2005. Attachment C contains photographs of these properties taken during the site inspection on May 10, 2005 as well as an aerial photograph of FISCA and Alameda Point taken in October 2004. Since there were no open excavations that allowed visual sightings of the marsh crust or former subtidal area materials at the time of this site inspection except for the pumping station excavation at Site IR02 (FISCA) photographing or developing visual descriptions of these materials were not obtainable or possible.

6.5 INTERVIEWS

Interviews were conducted with individuals representing various entities connected to the remedial action implemented for the marsh crust and the former subtidal area materials, as listed below.

- Mr. Thomas Macchiarella, Alameda BRAC Environmental Coordinator, BRAC Program Management Office West, Department of the Navy
- Mr. Lou Ocampo, P.E., Remedial Project Manager, BRAC Program Management Office West, Department of the Navy
- Mr. Doug DeLong, Environmental Compliance Manager, BRAC Program Management Office West, Department of the Navy
- Mr. Henry Wong, Remedial Project Manager, California Environmental Protection Agency, Department of Toxic Substances Control
- Mr. Philip Owen, Director of Construction, CATELLUS Commercial Development Corporation
- Ms. Debbie Potter, Base Reuse & Redevelopment Manager, City of Alameda
- Peter Russell, Ph.D., P.E., Principal, Russell Resources, Inc., Consultant to the City of Alameda
- Mr. Gregory McFann, Chief, Planning and Building Department, City of Alameda
- Mr. Ken Hansen, Community Co-Chair, Alameda Annex Restoration Advisory Board

An interview documentation form listing the name, title, and organization of each interviewee, along with the date and location where each interview took place, is provided in Attachment D. Individual interview records documenting each interview are contained in Attachment E.

No significant problems or concerns regarding the implementation of land use controls remedy for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point over the past five years were identified during the interviews. There had not been any emergency responses in connection with the remedy selected and implemented for these materials.

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Section 7
TECHNICAL ASSESSMENT

This section provides an assessment of the performance and effectiveness of the remedial action implemented for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point in satisfying the RAP/ROD requirements for protection of human health and the environment. This assessment is based on document and data review, site inspection, interviews, and the evaluations provided further below.

Technical assessment component of this five-year review focuses on responses to the following three key questions:

Question A: Is the remedy functioning as intended by the decision documents?

Question B: Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of remedy selection still valid?

Question C: Has any other information come to light that could call into question the protectiveness of the remedy?

Responses to these questions are provided below.

7.1 QUESTION A: IS THE REMEDY FUNCTIONING AS INTENDED BY THE DECISION DOCUMENTS?

Yes. The review of documents and data, site inspection, and interviews indicate that the remedy implemented for the marsh crust and the former subtidal area materials is functioning as intended by the decision documents (RAP/ROD). Land use controls are in place that restrict the excavation of these materials. Covenants and deed restrictions are in place that reinforce and monitor implementation of the land use controls remedy. The final Site Management Plan (SMP) Update prepared by the DON for the FISCA and Alameda Point properties further confirms the implementation of this remedy. A separate SMP prepared by the redevelopment contractor Catellus Development Corporation for site redevelopment activities, which among many other tasks involves excavations into the marsh crust and the former subtidal area materials, is in place and guides the daily and long term activities of Catellus, which is on site, and knowledgeable of the presence of these materials and the requirements of the SMP as well as the presence and requirements of the covenants and land use controls placed on these materials. Catellus has excavated into the marsh crust materials at FISCA, and has obtained the required permits before doing so, as per the LIFOC and Marsh Crust Ordinance No. 2824.

7.2 QUESTION B: ARE THE EXPOSURE ASSUMPTIONS, TOXICITY DATA, CLEANUP LEVELS, AND REMEDIAL ACTION OBJECTIVES USED AT THE TIME OF REMEDY SELECTION STILL VALID?

Yes. The assumptions made at the time of remedy selection are generally unchanged. The selected remedy for the marsh crust and the former subtidal area materials is in place. There have been no reported changes to this remedy that would affect its protectiveness. The future land use expectations at the FISCA and Alameda Point properties have not changed. No newly identified exposure pathways that would impact the effectiveness of this remedy have been reported.

As part of the response to this question, the ARARs, and the assumptions concerning exposure pathways were evaluated, as discussed below.

Changes in ARARs

The ARARs identified in the marsh crust and former subtidal area RAP/ROD were reviewed, and listed in Attachment F. The listing includes the citation for the ARAR, a brief description of the regulated parameter, the reference for the latest regulation reviewed, and a brief conclusion as to whether any updates to the regulation were identified that could potentially affect the protection of human health and the environment.

No changes to the ARARs evaluated in the marsh crust and former subtidal area RAP/ROD were identified that could potentially affect the protectiveness of the remedy implemented for the marsh crust and former subtidal area materials for protection of human health and the environment. In addition, no new ARARs were identified. However, the DTSC has recently adopted regulations for the purpose of establishing a standard for implementation of land use controls remedies where chemicals of concern remain at a site in concentrations not suitable for unrestricted use of that site. Effective April 19, 2003, the DTSC has added Section 67391.1, Land Use Covenants Regulations, to Title 22, Division 4.5, Chapter 39 of California Code of Regulations (CCR), as provided in Attachment F.

Although it does not appear that these post-RAP/ROD regulations include any 'new' substantive requirements that are necessary to protect human health and the environment and that were not already covered by the underlying statutory ARARs identified and described in the marsh crust and former subtidal area RAP/ROD, the DON has agreed to accept substantive provisions of these regulations as "relevant and appropriate" state ARARs.

Changes in Exposure Pathways, Toxicity, and Cleanup Levels

Risk assessments conducted for the marsh crust and the former subtidal area materials were reviewed. Risks have been estimated for the possibility of excavation and uncontrolled distribution of these materials in the future by comparing (B(a)P) concentrations in the marsh crust to its USEPA Region 9 PRG value for residential land

use scenario. B(a)P concentrations have been used because of the compound's potential toxicity. The level of risk has been determined to be unacceptable for unrestricted exposure to these materials. No COCs have been identified in the risk assessments for the marsh crust, because no completed exposure pathways have been shown to exist. However, an exposure pathway was deemed to exist in the event the marsh crust and subtidal area materials were brought to the surface or disposed of in an uncontrolled manner, and if workers in excavations that extended to the depths of these materials were exposed to them. Overall, these assumptions still appear to be current. No new information has been reported that would potentially affect the protectiveness of the land use controls remedy and accompanying covenants for the marsh crust and former subtidal area materials currently being implemented for protection of human health and the environment.

7.3 QUESTION C: HAS ANY OTHER INFORMATION COME TO LIGHT THAT COULD CALL INTO QUESTION THE PROTECTIVENESS OF THE REMEDY?

No. This five-year review did not discover information that would call into question the protectiveness of the land use controls remedy being implemented for the marsh crust and the subtidal area materials.

7.4 TECHNICAL ASSESSMENT SUMMARY

Based on the findings of this five-year review, the land use controls remedy selected for the marsh crust and the former subtidal area materials has been implemented as intended by the decision documents (RAP/ROD as well as Marsh Crust Ordinance No. 2824 and LIFOC), except for completion of the LUCICP. The Final RAP/ROD indicated that a LUCICP would be required to set forth the roles and responsibilities for implementing, monitoring, and enforcing the land use controls documented in the RAP/ROD. The DON agrees with long-term monitoring and oversight of the land use controls remedy. This will be accomplished through the preparation of a LUC RD, similar in content to a LUCICP. The LUC RD is scheduled to be prepared in FY 2006, and will provide the means to ensure implementation and enforcement of land use restrictions established for the marsh crust and former subtidal area materials.

Physical changes to the FISCA and Alameda Point properties that could potentially affect the protectiveness of the selected remedy were not discovered. No changes to the ARARs used for this remedy were identified that could potentially affect the protectiveness of the remedy for human health and the environment. There have not been changes to the risk assessment methodology or its assumptions that would affect the protectiveness of the land use controls remedy implemented for these materials.

This five-year review did not discover information that would call into question the protectiveness of the land use controls remedy that has been implemented for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point properties.

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Section 8
ISSUES, CONCLUSIONS, RECOMMENDATIONS

This five-year review did not discover issues relative to the performance of the land use controls remedy that has been implemented for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point properties. Land use controls have been and currently are in effect, as per the decision documents (RAP/ROD), LIFOC, and the City of Alameda Marsh Crust Ordinance No. 2824, that would restrict the exposure of residents, workers and the environment to these materials. Conditions that could result in having potential adverse effects on the future protectiveness of this remedy were not observed in this five-year review. The Navy intends to prepare a LUC RD in FY 2006, which will provide the means to ensure implementation and enforcement of land use restrictions established for the marsh crust and former subtidal area materials.

FISCA and Alameda Point properties overlying the marsh crust and former subtidal materials are being redeveloped in accordance with decision documents and redevelopment plans under the oversight of regulatory agencies. As redevelopment progresses, increased construction activities involving excavations potentially extending to the depths where these materials can be encountered, could reasonably be expected. Further, increased land use by new residents and workers is also to be expected. Also, future investigations and assessments could provide additional information on the threshold depths of the marsh crust and the former subtidal area materials currently depicted in land use covenants.

The Quitclaim Deed entered into between the DON and the ARRA, and the Covenant to Restrict Use entered into between the ARRA and DTSC, as well as Ordinance No. 2824 (Attachment G), were reviewed and determined to be properly executed and recorded. These documents are deemed to be in full force and effect and to be "in place." Activities that would have violated these land use controls were not observed under this five-year review. An interview with DTSC, and a visit to and interview at Alameda City Hall confirmed that these land use controls are currently in effect.

Further, copies of Bayport Development grant deeds that include environmental deed restrictions obtained from Alameda County confirm that real property owners are being notified of environmental restrictions (Attachment H).

The Marsh Crust Ordinance includes a map of threshold depths below existing ground surface. Excavations below these threshold depths would require permitting. It is recommended that as redevelopment of Alameda Point and FISCA properties progresses, City of Alameda improve and update this map.

On the basis of the findings of this five-year review, conducting further five-year reviews of the land use controls remedy that has been put into effect for the marsh crust and former subtidal area materials underlying FISCA and Alameda Point properties is recommended.

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Section 9
PROTECTIVENESS STATEMENT

The land use controls remedy implemented for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point properties currently provides the protectiveness of human health and the environment intended by the decision documents (RAP/ROD). Exposure of residents, workers and the environment to these materials have been restricted suitably by this remedy, addressing potential threats to human health and the environment possibly posed by these materials. Land use controls in effect, as per the decision documents (RAP/ROD), LIFOC, and Marsh Crust Ordinance No. 2824, clearly identify the permitting requirements and restrictions related to excavations into the marsh crust and the former subtidal area materials. DON's SMP and the Catellus SMP for the redevelopment of these properties provide guidelines for excavations and construction activities in a manner protective of the health and safety of site workers, future site residents, nearby residents, and the environment. Technical or physical issues related to the marsh crust and the former subtidal area materials that would be likely to reverse the current conditions and the remedy implemented for these materials were not discovered in this five-year review.

A LUC RD planned to be prepared by the DON in FY 2006 will develop protocols for the enforcement and monitoring of land use restrictions implemented for these materials underlying FISCA and Alameda Point.

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Section 10
NEXT FIVE-YEAR REVIEW

Land use controls are currently in effect for the marsh crust and the former subtidal area materials underlying FISCA and Alameda Point. As such, there needs to be a review of the protectiveness of this remedy within the next five years, or before June 2011.

The next five-year review of this land use controls remedy should include reviews of ARARs and risk assessments with respect to any changes to them that may have occurred during the five years from the five-year review presented herein, as well as redevelopment and land use history of FISCA and Alameda Point properties over the next five years. Permits requested and granted for excavations into the marsh crust and the former subtidal area materials should be reviewed, and site inspection as well as interviews should focus on if there have been violations of the land use covenants and restrictions. Deeds of properties overlying the marsh crust and former subtidal area materials should be reviewed with attention to whether environmental restrictions for these materials are being included on the property deeds.

The next five-year review should also assess whether new information on threshold depths have become available. If so, the threshold depth map of Marsh Crust Excavation Ordinance No. 2824 should be modified accordingly. The effectiveness and protectiveness of the existing land use controls remedy under actual long-term land use conditions that would be expected to have significantly increased over the next five years, ought to be reviewed.

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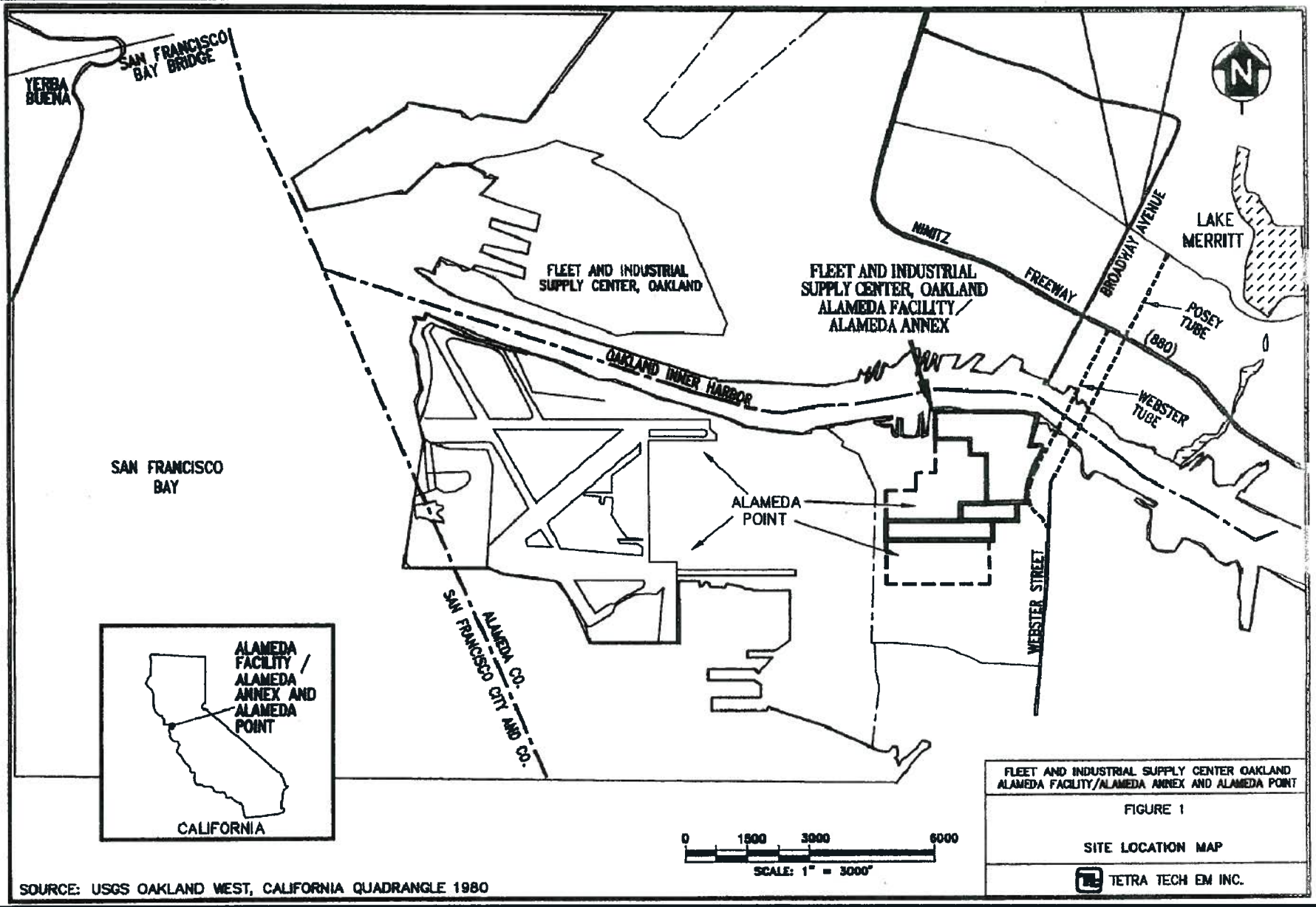
FIGURES



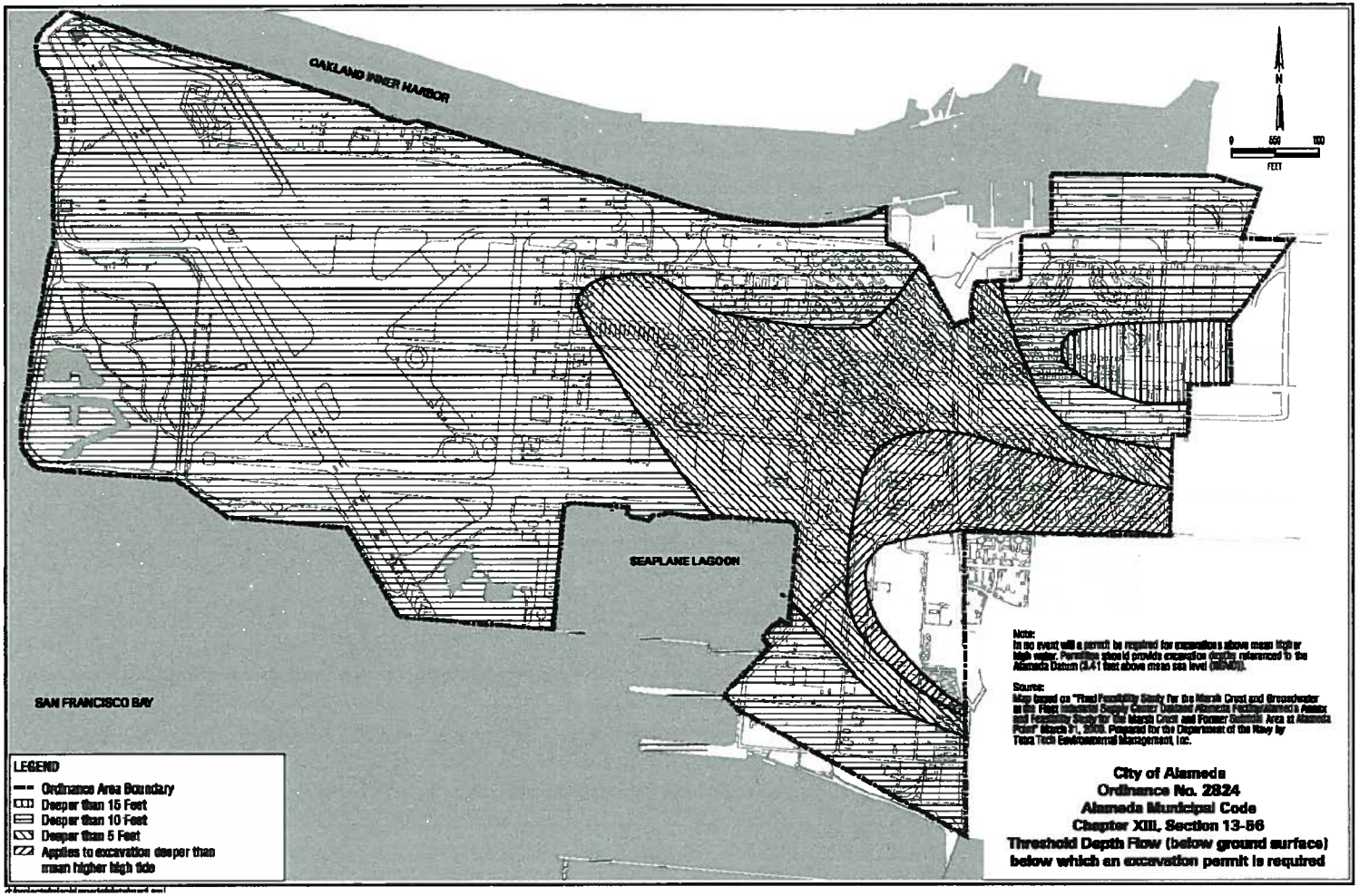
DATE	PROJECT NUMBER
MARCH 2006	128268

BROWN AND CALDWELL
SAN DIEGO, CALIFORNIA

STATUTORY FIVE-YEAR REVIEW
PART II - MARSH CRUST
(ADAPTED FROM MARSH CRUST RECORD OF DECISION DATED FEBRUARY 2001)

PROJECT LOCATION: FORMER NAVAL AIR STATION (NAS) ALAMEDA (NOW ALAMEDA POINT) ALAMEDA, CALIFORNIA

FIGURE-1
PART II



EXCERPTED FROM THE CITY OF ALAMEDA MARSH CRUST EXCAVATION ORDINANCE NO. 2824, DATED 02/2000

FIGURE 2-PART II
STATUTORY FIVE-YEAR REVIEW
PART II - MARSH CRUST

PROJECT LOCATION	DATE	PROJECT NUMBER
FORMER NAVAL AIR STATION (NAS) ALAMEDA (NOW ALAMEDA POINT) ALAMEDA, CALIFORNIA	MARCH 2006	128268

BROWN AND CALDWELL
SAN DIEGO, CALIFORNIA

3/13/2006 12:20 PM Layout: FIG 2 | Ref Files : MFig-2.jpg Projects\Navy\128268-NAS Alameda 5YR\CAD\Originals\FIG 2 MARSH CRUST.dwg itbarsky

ATTACHMENT A

LISTING OF
MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS
RELATED DOCUMENTS INCLUDED IN THIS
FIRST FIVE-YEAR REVIEW

ATTACHMENT A

LISTING OF MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS RELATED DOCUMENTS INCLUDED IN THIS FIRST FIVE-YEAR REVIEW

California Environmental Protection Agency, Department of Toxic Substances Control (DTSC). 2003. "Fact Sheet, Land Use Covenants and Regulations." July.

Catellus Development Corporation (Catellus). 2000. "Catellus Alameda Project Master Plan." August.

City of Alameda. 2000a. "Marsh Crust Excavation Ordinance 2824." February.

City of Alameda or Alameda Reuse and Redevelopment Authority and the California Environmental Protection Agency – Department of Toxic Substances Control. 2000b. "Covenant to Restrict use of Property (Environmental Restrictions), Fleet and Industrial Supply Center, Oakland, Alameda Facility and Alameda Annex, and, Alameda Naval Air Station East Housing, Alameda, California." July 17.

Department of the Navy (DON). 2000. "Quarterly Progress Report at Fleet Industrial Supply Center Oakland Alameda Facility Alameda Annex." September – November.

DON. 2000. 'Proposed Plan, Marsh Crust and Shallow Groundwater at Alameda Facility/Alameda Annex and Marsh Crust and Former Subtidal Area at Alameda Point, Alameda, California." June.

DON. 2001. "Final Remedial Action Plan/Record of Decision for the Marsh Crust at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, and for the Marsh Crust and Former Subtidal Area at Alameda Point." February.

DON. 2003. "Alameda Point Focus, Environmental Newsletter." July.

DON. 2004. *Navy/Marine Corps Policy for Conducting Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Statutory Five-Year Reviews.* November 2001, Revised May 2004.

DON. 2005. "Final Site Management Plan Update, Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, Alameda, California." January.

DON and the City of Alameda. 2000. "Quitclaim Deed and Environmental Restrictions Pursuant to California Civil Code Section 1471 for FISC Alameda." July 17.

DON and the Alameda Reuse and Redevelopment Authority. 2000. "Lease in Furtherance of Conveyance between the United States of America and the Alameda Reuse and Redevelopment Authority for the Former Naval Air Station Alameda." June 06.

DON and the Alameda Reuse and Redevelopment Authority. 2000. "Quitclaim Deed and Environmental Restrictions Pursuant to California Civil Code Section 1471 for East Housing Portion of NAS Alameda." July 17.

ERM. 2002. "Catellus Development Corporation Site Management Plan, Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA) and the Alameda Point East Housing Area, Alameda, California." April 23.

Naval Air Station Alameda. 1996. "History and Geology Fact Sheet." June.

Naval Facilities Engineering Command (NAVFAC). 1999. "Draft, Fleet and Industrial Supply Center Oakland, Alameda Facility/Annex, Finding of Suitability for Early Transfer for FISCO Alameda Facility/Annex Conveyance Parcels C-1, C-2, D & E and Environmental Response Obligation Addendum." December.

NAVFAC. 2001. *Remediation Innovative Technology Seminar (RITS), Five-Year Reviews.* October.

NAVFAC. 2005. "Alameda Point Focus." Winter.

PRC Environmental Management, Inc., and Versar, Inc. 1996. "Fleet and Industrial Supply Center, Oakland, Alameda Facility/Alameda Annex Site, Alameda, California, Final Remedial Investigation Report, Volume I of V, Text, Figures, and Tables." January.

Tetra Tech EM Inc. (TtEMI) 2000a. "Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, and Alameda Point, Alameda, California, Final Feasibility Study for the Marsh Crust and Groundwater at the Fleet Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, and Feasibility Study for the Marsh Crust and Former Subtidal Area at Alameda Point." March 31.

TtEMI. 2000b. "Draft Final Site Management Plan, Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, California." November 9.

United States Environmental Protection Agency (USEPA) to BRAC. 2001a. Letter Re: "Remedy Approval for Marsh Crust at FISC Alameda Annex and Marsh Crust and Former Subtidal Area at Alameda Naval Air Station" February 13.

USEPA. 2001b. *Comprehensive Five-Year Review Guidance.* EPA 540-R-01-007. OSWER No. 9355.7-03B-P. June.

ATTACHMENT B

SITE INSPECTION FORM

FIRST FIVE-YEAR REVIEW

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

ATTACHMENT B

SITE INSPECTION FORM

FIRST FIVE-YEAR REVIEW

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

I. SITE INFORMATION	
Site Name: Alameda Facility/Alameda Annex and Alameda Point	**Date of Inspection:** May 10, 2005
Location and Region: City of Alameda, California	**EPA ID:** 2170023236
Agency, office, or company leading the five-year review: Department of the Navy	**Weather/temperature:** Clear, dry, mid-70's
Remedy Includes: (Check all that apply) ☐ Landfill cover/containment ☐ Access controls ■ Institutional controls ☐ Groundwater pump and treatment ☐ Surface water collection and treatment ☐ Other – Shallow soil removal	☐ Monitored natural attenuation ☐ Groundwater containment ☐ Vertical barrier walls
Attachments: ☐ Inspection team roster attached	■ Site map attached – see Figures 1 and 2 in the report
II. INTERVIEWS (Check all that apply)	
1. **O&M site manager** N/A (Name) _____ (Title) _____ (Date) _____ Interviewed ☐ at site ☐ at office ☐ by phone Phone no. _____ Problems, suggestions; ☐ Report attached _____	
2. **O&M staff** N/A (Name) _____ (Title) _____ (Date) _____ Interviewed ☐ at site ☐ at office ☐ by phone Phone no. _____ Problems, suggestions; ☐ Report attached _____	

N/A – not applicable

10. **Local regulatory authorities and response agencies** (i.e., State and Tribal offices, emergency response office, police department, office of public health or environmental health, zoning office, recorder of deeds, or other city and county offices, etc.) Fill in all that apply.

Agency DTSC

Contact Mr. Henry Wong | Remedial Project Manager | May 11, 2005 | 510.540.3770

Name | Title | Date | Phone no.

Problems; suggestions; ■ Report attached – See Attachment E of this 5-year review report

Agency City of Alameda

Contact Ms. Debbie Potter | Base Reuse& Redevelopment Manager | May 12, 2005 | 510.749.5833

Name | Title | Date | Phone no.

Problems; suggestions; ■ Report attached – See Attachment E of this 5-year review report

Agency City of Alameda

Contact Mr. Gregory McFann | Chief, Planning and Building Dept. | May 12, 2005 | 510.747.6820

Name | Title | Date | Phone no.

Problems; suggestions; ■ Report attached - See Attachment E of this 5-year review report

Agency _____

Contact _____ | _____ | _____ | _____

Name | Title | Date | Phone no.

Problems; suggestions; ☐ Report attached _____

4. **Other interviews** (optional) ■ Report attached - See Attachment E of this 5-year review report
Mr. Thomas Macchiarella, Alameda BRAC Environmental Coordinator
Mr. Lou Ocampo, PE, RPM
Mr. Doug DeLong, Environmental Compliance Manager
Mr. Philip Owen, Catellus Director of Construction
Mr. Ken Hansen, RAB Community Co-Chair
Peter Russell, PhD., PE, Consultant to the City of Alameda

III. ON-SITE DOCUMENTS & RECORDS VERIFIED (Check all that apply)				
1.	**O&M Documents**			
	☐ O&M manual	☐ Readily available	☐ Up to date	☐ N/A
	☐ As-built drawings	☐ Readily available	☐ Up to date	☐ N/A
	☐ Maintenance logs	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
2.	**Site-Specific Health and Safety Plan**	☐ Readily available	☐ Up to date	☐ N/A
	☐ Contingency plan/emergency response plan	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
3.	**O&M and OSHA Training Records**	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
4.	**Permits and Service Agreements**			
	☐ Air discharge permit	☐ Readily available	☐ Up to date	☐ N/A
	☐ Effluent discharge	☐ Readily available	☐ Up to date	☐ N/A
	☐ Waste disposal, POTW	☐ Readily available	☐ Up to date	☐ N/A
	☐ Other permits	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
5.	**Gas Generation Records**	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
6.	**Settlement Monument Records**	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
7.	**Groundwater Monitoring Records**	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
8.	**Leachate Extraction Records**	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
9.	**Discharge Compliance Records**			
	☐ Air	☐ Readily available	☐ Up to date	☐ N/A
	☐ Water (effluent)	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			
10.	**Daily Access/Security Logs**	☐ Readily available	☐ Up to date	☐ N/A
	Remarks N/A			

N/A – not applicable

IV. O&M COSTS - Not Applicable

1. **O&M Organization**
   - ☐ State in-house
   - ☐ PRP in-house
   - ☐ Federal Facility in-house
   - ☐ Contractor for State
   - ☐ Contractor for PRP
   - ☐ Contractor for Federal Facility
   - ☐ Other _____

2. **O&M Cost Records**
   - ☐ Readily available ☐ Up to date
   - ☐ Funding mechanism/agreement in place
   - Original O&M cost estimate _____ ☐ Breakdown attached

   Total annual cost by year for review period if available

   From _____ To _____ _____ ☐ Breakdown attached
   Date Date Total cost
   From _____ To _____ _____ ☐ Breakdown attached
   Date Date Total cost
   From _____ To _____ _____ ☐ Breakdown attached
   Date Date Total cost
   From _____ To _____ _____ ☐ Breakdown attached
   Date Date Total cost
   From _____ To _____ _____ ☐ Breakdown attached
   Date Date Total cost

3. **Unanticipated or Unusually High O&M Costs During Review Period**
   Describe costs and reasons: _____

V. ACCESS AND INSTITUTIONAL CONTROLS ■ Applicable ☐ N/A

A. Fencing

1. **Fencing damaged** ☐ Location shown on site map ☐ Gates secured ☐ N/A
   Remarks - Portions of Alameda Facility/Alameda Annex and Alameda Point are open to access

B. Other Access Restrictions

1. **Signs and other security measures** ☐ Location shown on site map ☐ N/A
   Remarks – Secured areas are fenced and gated and posted against unauthorized entry

C. Institutional Controls (ICs)

1. **Implementation and enforcement**

Site conditions imply ICs not properly implemented ☐ Yes ■ No ☐ N/A
Site conditions imply ICs not being fully enforced ☐ Yes ■ No ☐ N/A

Type of monitoring (*e.g.*, self-reporting, drive by) Self-reporting and drive by
Frequency - monthly
Responsible party/agency - City of Alameda, and DON
Contact – City of Alameda – Ms. Debbie Potter and Mr. Greg McFann; DON – Mr. Doug DeLong

Reporting is up-to-date ■ Yes ☐ No ☐ N/A
Reports are verified by the lead agency ■ Yes ☐ No ☐ N/A

Specific requirements in deed or decision documents have been met ■ Yes ☐ No ☐ N/A
Violations have been reported ■ Yes ☐ No ☐ N/A
Other problems or suggestions: ☐ Report attached

2. **Adequacy** ■ ICs are adequate ☐ ICs are inadequate ☐ N/A
Remarks

D. General

1. **Vandalism/trespassing** ☐ Location shown on site map ■ No vandalism evident
Remarks

2. **Land use changes on site** ■ N/A
Remarks

3. **Land use changes off site** ■ N/A
Remarks

VI. GENERAL SITE CONDITIONS

A. Roads ■ Applicable ☐ N/A

1. **Roads damaged** ☐ Location shown on site map ■ Roads adequate ☐ N/A
Remarks

B. Other Site Conditions

Remarks _____

VII. LANDFILL COVERS ☐ Applicable ■ N/A

A. Landfill Surface

1. **Settlement** (Low spots) ☐ Location shown on site map ☐ Settlement not evident
Areal extent_____ Depth_____
Remarks_____

2. **Cracks** ☐ Location shown on site map ☐ Cracking not evident
Lengths_____ Widths_____ Depths_____
Remarks_____

3. **Erosion** ☐ Location shown on site map ☐ Erosion not evident
Areal extent_____ Depth_____
Remarks_____

4. **Holes** ☐ Location shown on site map ☐ Holes not evident
Areal extent_____ Depth_____
Remarks_____

5. **Vegetative Cover** ☐ Grass ☐ Cover properly established ☐ No signs of stress
☐ Trees/Shrubs (indicate size and locations on a diagram)
Remarks_____

6. **Alternative Cover (armored rock, concrete, etc.)** ☐ N/A
Remarks_____

7. **Bulges** ☐ Location shown on site map ☐ Bulges not evident
Areal extent_____ Height_____
Remarks_____

8. **Wet Areas/Water Damage** ☐ Wet areas/water damage not evident
☐ Wet areas ☐ Location shown on site map Areal extent_____
☐ Ponding ☐ Location shown on site map Areal extent_____
☐ Seeps ☐ Location shown on site map Areal extent_____
☐ Soft subgrade ☐ Location shown on site map Areal extent_____
Remarks_____

9. **Slope Instability** ☐ Slides ☐ Location shown on site map ☐ No evidence of slope instability
Areal extent_____
Remarks_____

B. Benches ☐ Applicable ☐ N/A
(Horizontally constructed mounds of earth placed across a steep landfill side slope to interrupt the slope in order to slow down the velocity of surface runoff and intercept and convey the runoff to a lined channel.)

1. **Flows Bypass Bench** ☐ Location shown on site map ☐ N/A or okay
Remarks_____

2. **Bench Breached** ☐ Location shown on site map ☐ N/A or okay
Remarks_____

3. **Bench Overtopped** ☐ Location shown on site map ☐ N/A or okay
Remarks_____

C. Letdown Channels ☐ Applicable ☐ N/A
(Channel lined with erosion control mats, riprap, grout bags, or gabions that descend down the steep side slope of the cover and will allow the runoff water collected by the benches to move off of the landfill cover without creating erosion gullies.)

1. **Settlement** ☐ Location shown on site map ☐ No evidence of settlement
Areal extent_____ Depth_____
Remarks_____

2. **Material Degradation** ☐ Location shown on site map ☐ No evidence of degradation
Material type_____ Areal extent_____
Remarks_____

3. **Erosion** ☐ Location shown on site map ☐ No evidence of erosion
Areal extent_____ Depth_____
Remarks_____

4. **Undercutting** ☐ Location shown on site map ☐ No evidence of undercutting
Areal extent_____ Depth_____
Remarks_____

5. **Obstructions** Type_____ ☐ No obstructions
☐ Location shown on site map Areal extent_____
Size_____
Remarks_____

6. **Excessive Vegetative Growth** Type_____
☐ No evidence of excessive growth
☐ Vegetation in channels does not obstruct flow
☐ Location shown on site map Areal extent_____
Remarks_____

D. Cover Penetrations ☐ Applicable ☐ N/A

1. **Gas Vents** ☐ Active ☐ Passive
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance
☐ N/A
Remarks_____

2. **Gas Monitoring Probes**
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance ☐ N/A
Remarks_____

3. **Monitoring Wells** (within surface area of landfill)
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance ☐ N/A
Remarks_____

4. **Leachate Extraction Wells**
☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
☐ Evidence of leakage at penetration ☐ Needs Maintenance ☐ N/A
Remarks_____

5. **Settlement Monuments** ☐ Located ☐ Routinely surveyed ☐ N/A
Remarks_____

E. Gas Collection and Treatment	☐ Applicable	☐ N/A	
1.	**Gas Treatment Facilities** ☐ Flaring ☐ Thermal destruction ☐ Collection for reuse ☐ Good condition ☐ Needs Maintenance Remarks_____		
2.	**Gas Collection Wells, Manifolds and Piping** ☐ Good condition ☐ Needs Maintenance Remarks_____		
3.	**Gas Monitoring Facilities** (*e.g.*, gas monitoring of adjacent homes or buildings) ☐ Good condition ☐ Needs Maintenance ☐ N/A Remarks_____		
F. Cover Drainage Layer	☐ Applicable	☐ N/A	
1.	**Outlet Pipes Inspected** ☐ Functioning ☐ N/A Remarks_____		
2.	**Outlet Rock Inspected** ☐ Functioning ☐ N/A Remarks_____		
G. Detention/Sedimentation Ponds	☐ Applicable	☐ N/A	
1.	**Siltation** Areal extent_____ Depth_____ ☐ N/A ☐ Siltation not evident Remarks_____		
2.	**Erosion** Areal extent_____ Depth_____ ☐ Erosion not evident Remarks_____		
3.	**Outlet Works** ☐ Functioning ☐ N/A Remarks_____		
4.	**Dam** ☐ Functioning ☐ N/A Remarks_____		

H. Retaining Walls ☐ Applicable ☐ N/A

1. **Deformations** ☐ Location shown on site map ☐ Deformation not evident
   Horizontal displacement_____ Vertical displacement_____
   Rotational displacement_____
   Remarks_____

2. **Degradation** ☐ Location shown on site map ☐ Degradation not evident
   Remarks_____

I. Perimeter Ditches/Off-Site Discharge ☐ Applicable ☐ N/A

1. **Siltation** ☐ Location shown on site map ☐ Siltation not evident
   Areal extent_____ Depth_____
   Remarks_____

2. **Vegetative Growth** ☐ Location shown on site map ☐ N/A
   ☐ Vegetation does not impede flow
   Areal extent_____ Type_____
   Remarks_____

3. **Erosion** ☐ Location shown on site map ☐ Erosion not evident
   Areal extent_____ Depth_____
   Remarks_____

4. **Discharge Structure** ☐ Functioning ☐ N/A
   Remarks_____

VIII. VERTICAL BARRIER WALLS ☐ Applicable ■N/A

1. **Settlement** ☐ Location shown on site map ☐ Settlement not evident
   Areal extent_____ Depth_____
   Remarks_____

2. **Performance Monitoring** Type of monitoring_____
   ☐ Performance not monitored
   Frequency_____ ☐ Evidence of breaching
   Head differential_____
   Remarks_____

IX. GROUNDWATER/SURFACE WATER REMEDIES ☐ Applicable ■N/A
A. Groundwater Extraction Wells, Pumps, and Pipelines ☐ Applicable ☐ N/A
1. **Pumps, Wellhead Plumbing, and Electrical** ☐ Good condition ☐ All required wells properly operating ☐ Needs Maintenance ☐ N/A Remarks_____
2. **Extraction System Pipelines, Valves, Valve Boxes, and Other Appurtenances** ☐ Good condition ☐ Needs Maintenance Remarks_____
3. **Spare Parts and Equipment** ☐ Readily available ☐ Good condition ☐ Requires upgrade ☐ Needs to be provided Remarks_____
B. Surface Water Collection Structures, Pumps, and Pipelines ☐ Applicable ☐ N/A
1. **Collection Structures, Pumps, and Electrical** ☐ Good condition ☐ Needs Maintenance Remarks_____
2. **Surface Water Collection System Pipelines, Valves, Valve Boxes, and Other Appurtenances** ☐ Good condition ☐ Needs Maintenance Remarks_____
3. **Spare Parts and Equipment** ☐ Readily available ☐ Good condition ☐ Requires upgrade ☐ Needs to be provided Remarks_____

C. Treatment System ☐ Applicable ☐ N/A

1. **Treatment Train** (Check components that apply)
   ☐ Metals removal ☐ Oil/water separation ☐ Bioremediation
   ☐ Air stripping ☐ Carbon adsorbers
   ☐ Filters_____
   ☐ Additive (*e.g.*, chelation agent, flocculent)_____
   ☐ Others_____
   ☐ Good condition ☐ Needs Maintenance
   ☐ Sampling ports properly marked and functional
   ☐ Sampling/maintenance log displayed and up to date
   ☐ Equipment properly identified
   ☐ Quantity of groundwater treated annually_____
   ☐ Quantity of surface water treated annually_____
   Remarks_____

2. **Electrical Enclosures and Panels** (properly rated and functional)
   ☐ N/A ☐ Good condition ☐ Needs Maintenance
   Remarks_____

3. **Tanks, Vaults, Storage Vessels**
   ☐ N/A ☐ Good condition ☐ Proper secondary containment ☐ Needs Maintenance
   Remarks_____

4. **Discharge Structure and Appurtenances**
   ☐ N/A ☐ Good condition ☐ Needs Maintenance
   Remarks_____

5. **Treatment Building(s)**
   ☐ N/A ☐ Good condition (esp. roof and doorways) ☐ Needs repair
   ☐ Chemicals and equipment properly stored
   Remarks_____

6. **Monitoring Wells** (pump and treatment remedy)
   ☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
   ☐ All required wells located ☐ Needs Maintenance ☐ N/A
   Remarks_____

D. Monitoring Data

1. Monitoring Data
   ☐ Is routinely submitted on time ☐ Is of acceptable quality

2. Monitoring data suggests:
   ☐ Groundwater plume is effectively contained ☐ Contaminant concentrations are declining

D. Monitored Natural Attenuation

1. **Monitoring Wells** (natural attenuation remedy)
   ☐ Properly secured/locked ☐ Functioning ☐ Routinely sampled ☐ Good condition
   ☐ All required wells located ☐ Needs Maintenance ☐ N/A
   Remarks_____

X. OTHER REMEDIES

If there are remedies applied at the site which are not covered above, attach an inspection sheet describing the physical nature and condition of any facility associated with the remedy. An example would be soil vapor extraction.

XI. OVERALL OBSERVATIONS

A. Implementation of the Remedy

Describe issues and observations relating to whether the remedy is effective and functioning as designed. Begin with a brief statement of what the remedy is to accomplish (i.e., to contain contaminant plume, minimize infiltration and gas emission, etc.).

The remedy for the marsh crust and the former subtidal area materials underlying the Alameda Facility/Alameda Annex and Alameda Point, institutional controls that restrict the unauthorized and unregulated excavation of these materials, has been implemented and continues to be in effect and maintains its intended protectiveness of human health and the environment

B. Adequacy of O&M - N/A

Describe issues and observations related to the implementation and scope of O&M procedures. In particular, discuss their relationship to the current and long-term protectiveness of the remedy.

C. Early Indicators of Potential Remedy Problems

Describe issues and observations such as unexpected changes in the cost or scope of O&M or a high frequency of unscheduled repairs that suggest that the protectiveness of the remedy may be compromised in the future.

None were reported, or noted during the site inspection.

D. Opportunities for Optimization

Describe possible opportunities for optimization in monitoring tasks or the operation of the remedy.

Existing covenants that restrict excavations into the marsh crust and former subtidal area materials appear to be providing the protectiveness intended by the land use controls remedy. As population density increases in the former Alameda Facility /Alameda Annex and Alameda Point properties by future arrivals, residents and workers, however, the continued effectiveness and protectiveness of this remedy would need to be reviewed again in the next five-year review.

ATTACHMENT C

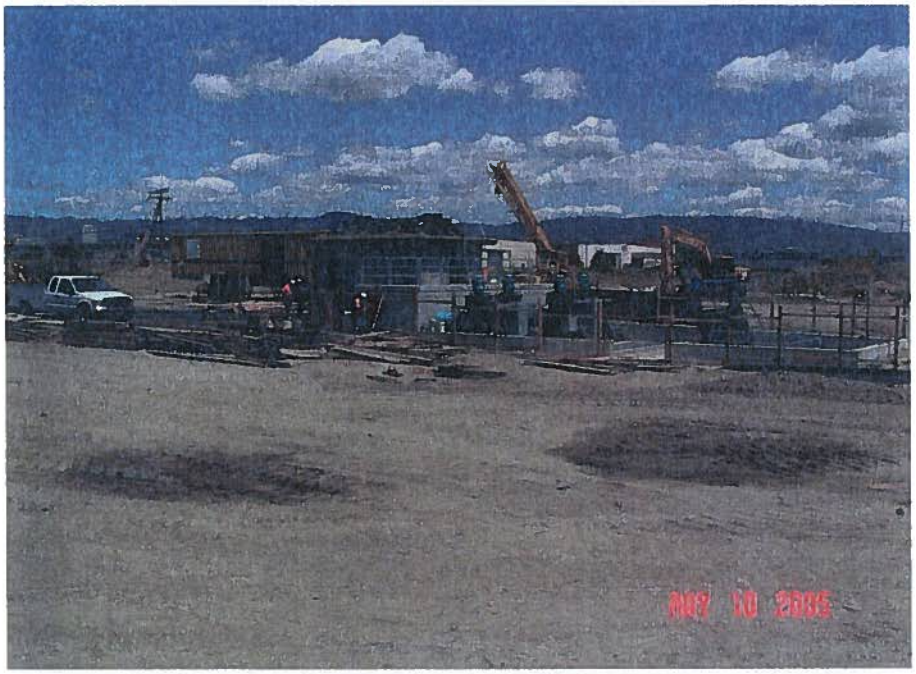
PHOTOGRAPHS TAKEN DURING SITE INSPECTION
ON MAY 10, 2005
and
AERIAL PHOTOGRAPH OF FISCA and ALAMEDA POINT
OVERLYING THE
MARSH CRUST and THE FORMER SUBTIDAL AREA
DATED OCTOBER 2004

FIRST FIVE-YEAR REVIEW

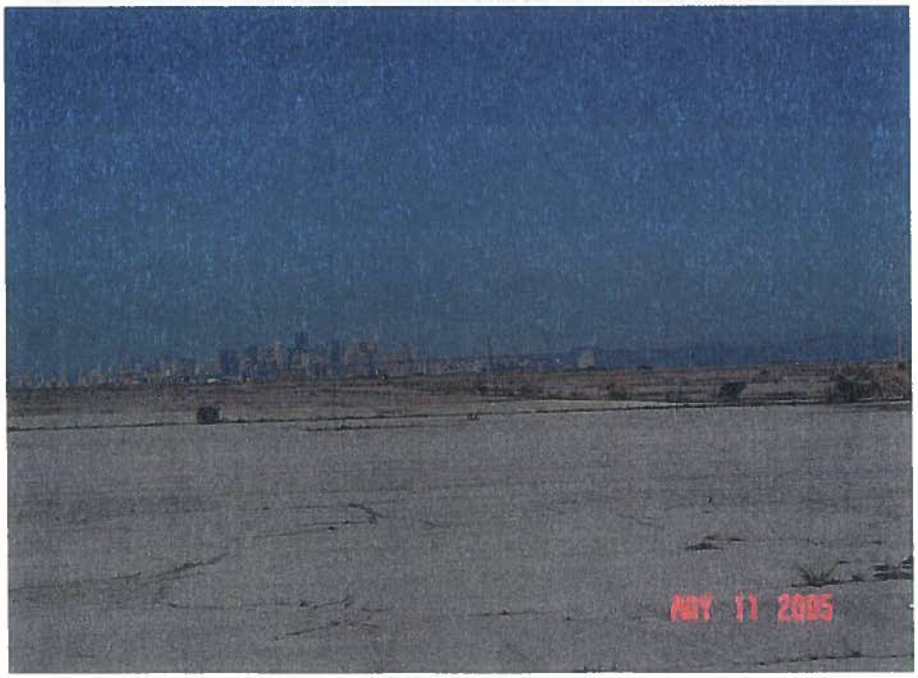
MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

ATTACHMENT C

PHOTOGRAPHS TAKEN DURING SITE INSPECTION ON MAY 10, 2005 and AERIAL PHOTOGRAPH OF FISCA and ALAMEDA POINT OVERLYING THE MARSH CRUST and FORMER SUBTIDAL AREA DATED OCTOBER 2004
FIRST FIVE-YEAR REVIEW
MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY



Excavation into the marsh crust – storm water pumping station, Alameda Annex (Site IR02)



Alameda Point - looking west over the landing strip – San Francisco in background

Aerial photograph dated October 2004 - looking west - the entire Alameda Facility/Alameda Annex (foreground) and Alameda Point further to the west

ATTACHMENT D

INTERVIEW DOCUMENTATION FORM

FIRST FIVE-YEAR REVIEW

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

ATTACHMENT D

INTERVIEW DOCUMENTATION FORM

FIRST FIVE-YEAR REVIEW

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

Name	Title / Position	Organization	Interview Date and Location
Mr. Doug DeLong	Environmental Compliance Manager	BRAC Program Management Office West Department of the Navy	May 10, 2005 Alameda Annex and Point
Mr. Philip Owen	Director of Construction	Catellus Commercial Development Corporation	May 10, 2005 Site IR02
Mr. Henry Wong	Remedial Project Manager	California Environmental Protection Agency, Department of Toxic Substances Control	May 11, 2005 DTSC Office, Berkeley
Ms. Debbie Potter	Base Reuse & Redevelopment Manager	City of Alameda	May 12, 2005 Alameda Point
Peter Russell, Ph.D., P.E.	Principal	Russell Resources, Inc. (Consultant to the City of Alameda)	May 12, 2005 Alameda Point
Mr. Gregory McFann	Chief, Planning and Building Department	City of Alameda	May 12, 2005 Alameda City Hall
Mr. Thomas Macchiarella	Alameda BRAC Environmental Coordinator	BRAC Program Management Office West Department of the Navy	May 18, 2005 SWDIV San Diego
Mr. Ken Hansen	Community Co-Chair, Alameda Annex	Restoration Advisory Board	May 20 & 24, 2005 Email and phone
Mr. Lou Ocampo	Remedial Project Manager	BRAC Program Management Office West Department of the Navy	June 10, 2005 Email and phone

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ATTACHMENT E

INTERVIEW RECORDS

FIRST FIVE-YEAR REVIEW

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

ATTACHMENT E

INTERVIEW RECORDS

FIRST FIVE-YEAR REVIEW

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: : First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 11:30 AM	**Date:** May 10, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** Alameda Point Main Office Repository	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Doug DeLong	**Title:** Environmental Compliance Manager	**Organization:** BRAC Management Office West, DON

Telephone No: 415.743.4713 **Fax No:** 415.743.4700 **E-Mail Address:** douglas.delong@navy.mil	**Street Address:** 410 Palm Avenue B-1, Suite 161 **City, State, Zip:** San Francisco, CA 94130-1806

Summary Of Conversation

Q: Has your office conducted site visits, inspections?

A: Yes.

Q: Do you receive communication on activities related to the marsh crust and the former subtidal area materials?

A: Yes.

Q: Have there been complaints, violations, or other incidents related to these materials that required your office to respond?

A: No.

Q: Do you feel well informed about the activities related to the marsh crust and the former subtidal area materials?

A: Yes.

Q: Do you have any comments, suggestions, or recommendations as to the management of the marsh crust and the former subtidal area materials?

A: No.

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 1:30 PM	**Date:** May 10, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** Site IR02 – Alameda Facility/Alameda Annex	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Philip Owen	**Title:** Director of Construction	**Organization:** Catellus
Telephone No: 510.337.8735 **Fax No:** 510.337.0440 **E-Mail Address:** philip_owen@catellus.com	**Street Address:** 1999 Harrison Street, Suite 2150 **City, State, Zip:** Oakland, CA 94612	

Summary Of Conversation

There is a Site Management Plan (SMP) dated April 23, 2002 that contains restrictions for excavations into the marsh crust. The SMP has detailed procedures as how to handle marsh crust materials, including suspect matter immediately above and below the marsh crust, and procedures on stockpiling and characterizing the materials before their disposal.

Catellus routinely asks City of Alameda for permits before excavating into the marsh crust, such as for the storm water removal pump station nearing completion at this time. Catellus keeps copies of these permits at its construction trailer on the site of IR02. Permitting office at the City of Alameda City Hall, and the DON's BRAC office in San Diego also receive and keep copies of these permits.

Anytime suspect material is encountered in an excavation, work stops. Catellus brings in its onsite consultant for marsh crust identification and handling. Excavator operators have been briefed to recognize marsh crust materials, as well as the site superintendents. Typically, marsh crust materials have been testing as Class II materials, and have been disposed at nearby permitted and regulated landfills.

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 2:00 PM	**Date:** May 11, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** DTSC Office of Military Facilities, Berkeley	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Henry Wong	**Title:** Remedial Project Manager	**Organization:** DTSC
Telephone No: 510.540.3770 **Fax No:** 510.849.5285 **E-Mail Address:** hwong@dtsc.ca.gov	**Street Address:** 700 Heinz Ave., Suite 200 **City, State, Zip:** Berkeley, CA. 94710-2721	

Summary Of Conversation

Q: Has your office conducted site visits, inspections?
A: Yes. I tour the Alameda Annex and Point sites with the RAB at least once a year.

Q: Do you receive communication on activities related to the marsh crust and former subtidal area materials?
A: Yes. I receive communications monthly. We have face to face or telephone conferences with the BCT, as well as with the City of Alameda and Catellus.

Q: Have there been complaints, violations, or other incidents related to the marsh crust and former subtidal area materials remedy of land use controls that required your office to respond?
A: No. None were received by my office, and no deviations were reported.

Q: Do you feel well informed about the activities related to the marsh crust and former subtidal area materials?
A: Yes. As an example, Site IR02 excavations into the marsh crust triggered Ordinance 2824, Catellus applied for permits, the remedy as implemented worked well.

Q: Do you have any comments, suggestions, or recommendations as to the management of the remedy for the marsh crust and former subtidal area materials?
A: Yes. The Covenant between the DTSC and the ARRA says that homeowners must be informed not to excavate into the marsh crust and former subtidal area materials; maps, such as the threshold map in Ordinance 2824 with better definition, are needed that clearly communicate this to the homeowners are necessary. Also, typically, ICs should have two components – Land Use Restrictions; and a Land Use Control Implementation and Certification Plan (LUCICP), which is a self-certification report. This plan indicates whether the land use restrictions have been violated. This document is needed for Alameda.

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 11:00 AM	**Date:** May 12, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** City of Alameda City Hall West, Alameda Point	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Ms. Debbie Potter	**Title:** Base Reuse & Redevelopment Manager	**Organization:** City of Alameda

Telephone No: 510.749.5833 **Fax No:** 510.749.5808 **E-Mail Address:** dpotter@ci.alameda.ca.us	**Street Address:** 950 West Mall Square, Room 215 **City, State, Zip:** Alameda, CA 94501-7552

Summary Of Conversation

Ms. Potter was joined by Mr. Peter Russell, PhD., P.E., consultant to the City of Alameda in this interview.

Q: Has your office conducted site visits, inspections?
A: City of Alameda Building and Planning Department issues excavation permits – they would visit and inspect an excavation if there was a need or demand.

Q: Do you receive communication on activities related to the marsh crust and former subtidal area materials?
A: Yes.

Q: Have there been complaints, violations, or other incidents related to the marsh crust and former subtidal area materials that required your office to respond?
A: City of Alameda Building and Planning Department would receive such complaints.

Q: Do you feel well informed about the activities related to the marsh crust and former subtidal area materials?
A: Yes.

Q: Do you have any comments, suggestions, or recommendations as to the management of the remedy for the marsh crust and former subtidal area materials?
A: No. The marsh crust excavation ordinance seems to be working well – an elegant solution.

Q: Do you feel that the Land Use Controls in effect for the marsh crust and former subtidal area materials are protective?
A: Yes.

Q: Where are the Land Use Controls documents filed?
A: The Covenants are filed at the City Recorder's Office at City Hall.

Q: Do individual homeowners receive copies of the land use controls and restrictions documents?
A: Rental agreements will preclude excavating by renters, their lease will have a restriction clause in it with respect to excavating into the marsh crust. The marsh crust deed restrictions apply to industrial and commercial developments also. For each location there is a master developer who is responsible for notifying the renters as to the existence of the marsh crust excavation ordinance.

Q: Is there a map with a better definition of marsh crust and former subtidal area materials threshold depths?
A: The threshold map in Ordinance 2824 would be updated when new information is obtained.

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 2:00 PM	**Date:** May 12, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** City of Alameda City Hall	☐ Incoming ☐ Outgoing	
Contact Made By:		
Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell
Individual Contacted:		
Name: Mr. Gregory McFann	**Title:** Chief of Building and Planning	**Organization:** City of Alameda
Telephone No: 510.747.6820 **Fax No:** 510.747.6804 **E-Mail Address:** gmcfann@ci.alameda.ca.us	**Street Address:** 2263 Santa Clara Avenue, Room 190 **City, State, Zip:** Alameda, CA 94501-4477	

Summary Of Conversation

City of Alameda does not regulate resale of houses, or the real estate agents who sell them.

Land Use Controls documents are filed at the County Recorder's office for Alameda County.

Any one can visit the City Clerk's Office on the 3rd floor of the Alameda City Hall and request a copy of any City Ordinance.

Excavations into the marsh crust and the former subtidal area materials require permits from the Building and Planning Department. Results of laboratory analyses of these materials are submitted to this department.

The threshold map in Ordinance 2824 does not change. For a specific lot, the owner has to test the threshold depth. The threshold map is for general rendition – the ordinance states that individuals need to locate the depth of marsh crust materials underlying their lot themselves.

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 9:30 AM	**Date:** May 18, 2005
Type: ☐ Telephone ■ Visit ☐ Other **Location of Visit:** SWDIV, San Diego	☐ Incoming ☐ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Thomas Macchiarella	**Title:** BRAC Environmental Coordinator	**Organization:** BRAC Management Office West, DON
Telephone No: 619.532.0907 **Fax No:** 619.532.0940 **E-Mail Address:** thomas.macchiarella@navy.mil	**Street Address:** 1230 Columbia Street, Suite 1100 **City, State, Zip:** San Diego, CA 92101-8571	

Summary Of Conversation

Q: What effects have the remedy selected for the marsh crust and former subtidal area materials had on the surrounding community?
A: No continuing concerns have been expressed.

Q: Are you aware of any community concerns regarding administration of the remedy for the marsh crust and former subtidal area materials?
A: No. For example, housing along Webster Avenue to the Alameda Point entrance is in the marsh crust area – the CC&Rs given to the homeowners include the land use restrictions related to the marsh crust materials.

Q: Are you aware of events or incidents such as vandalism, or emergency responses from local authorities?
A: No.

Q: Do you feel well informed about the activities related to the marsh crust and former subtidal area materials?
A: Yes. I am a member of the BRAC Cleanup Team; we meet monthly and discuss the Alameda Annex and Point.

Q: Do you have any comments, suggestions, or recommendations as to the management of the remedy for the marsh crust and former subtidal area materials?
A: No. It is working effectively.

Q: What is your overall impression of the land use controls remedy implemented for the marsh crust and former subtidal area materials?
A: The remedy has been successfully implemented, and it is continuing to be effective.

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 9:30 AM	**Date:** June 10, 2005
Type: ■ Telephone ☐ Visit ■ Other - email **Location of Visit:** --	■ Incoming ■ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Luciano Ocampo	**Title:** Remedial Project Manager	**Organization:** BRAC Management Office West, DON
Telephone No: 619-532-0969 **Fax No:** 619-532-0940 **E-Mail Address:** luciano.ocampo@navy.mil	**Street Address:** 1230 Columbia Street, Suite 1100 **City, State, Zip:** San Diego, CA 92101-8571	

Summary Of Conversation

Q: What is your overall impression of the remedy implemented for the marsh crust and former subtidal area materials?
A: I have not heard of any violations of the marsh crust ordinance. The remedy appears to be working well.

Q: Overall, have you been pleased with the remedy implemented for the marsh crust and former subtidal area materials?
A: Yes.

Q: What effects have the remedy selected for the marsh crust and former subtidal area materials had on the surrounding community?
A: I did not encounter any negative effects on the community.

Q: Are you aware of any community concerns regarding the marsh crust and former subtidal area materials remedy?
A: No.

Q: Are you aware of events or incidents such as vandalism, or emergency responses from local authorities?
A: No.

Q: Do you feel well informed about activities related to the marsh crust and former subtidal area materials ?
A: Yes.

Q: Do you have any comments, suggestions, or recommendations as to the management of Site IR02 remediation?
A: No.

Site Name: Alameda Facility/Alameda Annex and Alameda Point	**EPA ID No.:** 2170023236	
Subject: First Five-Year Review, Land Use Controls Remedy for the Marsh Crust and Former Subtidal Area Materials	**Time:** 11:00 AM	**Date:** May 20 & 24, 2005
Type: ■ Telephone ☐ Visit ■ Other - email **Location of Visit:** --	■ Incoming ■ Outgoing	

Contact Made By:

Name: Omer Kadaster	**Title:** Executive Engineer	**Organization:** Brown and Caldwell

Individual Contacted:

Name: Mr. Ken Hansen	**Title:** Community Co-Chair, Alameda Annex	**Organization:** Restoration Advisory Board (RAB)
Telephone No: 510.444.0515 **Fax No:** **E-Mail Address:** hansengoodcoffee@aol.com	**Street Address:** 327 Clay Street **City, State, Zip:** Oakland, CA 94607	

Summary Of Conversation

Q: What is your overall impression of the remedy for the marsh crust and former subtidal area materials?
A: The land use restrictions are working well.

Q: What effects have the remedy selected for the marsh crust and former subtidal area materials had on the surrounding community?
A: I have not heard any comments.

Q: Are you aware of any community concerns regarding the remedy implemented for the marsh crust and former subtidal area materials?
A: No concerns have been expressed to me.

Q: Are you aware of events or incidents such as vandalism, or emergency responses from local authorities with respect to this remedy?
A: No.

Q: Do you feel well informed about the remedy implemented for the marsh crust and former subtidal area materials?
A: Yes. I am a member of the RAB; we receive reports, and we meet regularly and discuss the Alameda Annex.

Q: Do you have any comments, suggestions, or recommendations as to the implementation of the remedy for the marsh crust and former subtidal area materials
A: I have not heard of anyone digging by himself into the marsh crust without a city permit. The land use controls work well today, for the short-term. However, future liabilities can exist if the land use controls are not protective enough; will the 2nd, 3rd generation homeowners or renters be made aware of these restrictions? We do not know if long-term land use plans will follow the land use controls in place now.

ATTACHMENT F

APPLICABLE OR RELEVANT and APPROPRIATE REQUIREMENTS (ARARs) ANALYSIS REVIEW

FIRST FIVE-YEAR REVIEW

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

ATTACHMENT F

APPLICABLE OR RELEVANT and APPROPRIATE REQUIREMENTS (ARARS) REVIEW

FIRST FIVE-YEAR REVIEW
MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

ARAR in the ROD	Regulated Parameter	Latest Regulation Reviewed	Conclusion as to whether there are any updates that could potentially affect the protection of human health and the environment
Cal. Civil Code §1471	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment
Cal. Health & Safety Code §25202.5	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment
Cal. Health & Safety Code §25222.1	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment
Cal. Health & Safety Code §25230	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/cala	No substantive changes that would affect the institutional controls for protection of human health and the environment

ARAR in the ROD	Regulated Parameter	Latest Regulation Reviewed	Conclusion as to whether there are any updates that could potentially affect the protection of human health and the environment
		w.html.	
Cal. Health & Safety Code §25232	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment
Cal. Health & Safety Code §25233	Institutional Control	California Codes have been updated to include the 2004 Statutes Used the following website: http://www.leginfo.ca.gov/calaw.html	No substantive changes that would affect the institutional controls for protection of human health and the environment

CCR Title 22, §67391.1. Requirements for Land Use Covenants.

(a) Except as provided in subsection (f) of this section, a land use covenant imposing appropriate limitations on land use shall be executed and recorded when:

(1) Facility closure, corrective action, remedial or removal action, or other response actions are undertaken pursuant to chapter 6.5, 6.8, or 6.85 of division 20 of the Health and Safety Code, or article 1 of chapter 1, part 10.5 of the Education Code; and

(2) Hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land.

(b) The Department shall not approve or concur in a response action decision document which includes limitations on land use or other institutional controls, unless the limitations or controls are clearly set forth and defined in the response action decision document. Except as provided in subsection (f) of this section, any response action decision document shall (1) specify that the limitations or controls will be incorporated into an appropriate land use covenant as required by this section and (2) include an implementation and enforcement plan. The Department shall provide public notice of the response action decision document in a manner that meets the requirements of Health and Safety Code section 25356.1(e)(2) or section 25398.6(i). DTSC will consult with local agencies, including local reuse authorities, as appropriate.

(c) Except as provided in subsection (f) of this section,

(1) The Department shall not certify that a response action has been satisfactorily completed, with the exception of any necessary long term operation and maintenance activities, until such land use covenants required by this section have been signed and recorded in the county, or

(2) The Department shall not acknowledge final certification of closure of a hazardous waste disposal unit until such land use covenants required by this section also meet the requirements of sections 66264.119 or 66265.119 as applicable.

(d) All land use covenants pursuant to this section shall be executed by the Department and the landowner and shall be recorded in the county where the land is located. All land use covenants shall run with the land pursuant to Civil Code section 1471 and/or Health and Safety Code sections 25202.5, 25222.1, 25355.5, or 25398.7 and 25396(*l*) and shall continue in perpetuity unless modified or terminated in accordance with applicable law.

(e) Federal Property.

(1) The Department shall not consider property owned by the federal government to be suitable for transfer to nonfederal entities pursuant to 42 United States Code section 9620(h)3-4 where hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels which are not suitable for unrestricted use of the land, unless an appropriate land use covenant will be executed by the Department and the federal government and recorded in the county where the land is located in accordance with this section.

(2) Whenever the Department determines that it is not feasible to record a land use covenant for property owned by the federal government, such as transfers from one federal agency to another, the Department and federal government may use other mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property. Examples include: Amendments to the federal government facility master plan, physical monuments, or agreements between the federal government facility and the Department.

(f) Whenever the Department determines that it is not feasible to establish a land use covenant as a component of a remedy for a site, it may use other institutional control mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property.

(1) Examples include publicly owned tidelands trust property: such mechanisms may include, but are not limited to physical monuments, or a memorandum of agreement or consent agreement between the Department and the trustee for the tideland trust property.

(2) If the Department subsequently determines that it is feasible to record land use covenants for such sites, the Department shall ensure that the land use covenants are recorded in accordance with (d).

(g) Modification and Termination. The Department may modify or terminate land use covenants if it determines such modification or termination is protective of public health and safety and the environment.

(h) The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls.

(i) For purposes of this section:

(1) "Department" means the Department of Toxic Substances Control.

(2) "Federal property" means that property found in the Federal Property and Administrative Services Act of 1949, as amended, 40 United States Code sections 471 et seq.

(3) "Land use covenants" include easements, servitudes, covenants and restrictions which run with the land and restrict uses to protect public health and safety and the environment.

(4) "Response action decision document" means a remedial action plan, removal action workplan, record of decision, closure plan, documents written pursuant to a corrective action order or corrective action consent agreement, or other similar documents which formally select an action to be taken in response to the release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances.

(5) "Unrestricted use of the land" means that the land may be used for any purpose.

ATTACHMENT G

COPIES OF:

"QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTIONS PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1471 FOR EAST HOUSING PORTION OF NAS ALAMEDA" BETWEEN THE DEPARTMENT OF THE NAVY AND THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY, DATED JULY 17, 2000, RECORDED ON JULY 20, 2000;

and

"COVENANT TO RESTRICT USE OF PROPERTY (ENVIRONMENTAL RESTRICTION), FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX, AND ALAMEDA NAVAL AIR STATION EAST HOUSING, ALAMEDA, CALIFORNIA" BETWEEN THE CITY OF ALAMEDA OR ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY AND THE CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, DEPARTMENT OF TOXIC SUBSTANCES CONTROL, DATED JULY 17, 2000, RECORDED ON JULY 20, 2000;

and

"CITY OF ALAMEDA MARSH CRUST EXCAVATION ORDINANCE NO. 2824" DATED MARCH 8, 2000.

RECORDING REQUESTED BY

And when recorded, mail this deed and, unless otherwise shown below, mail tax statements to:

James M. Flint, Executive Director
Alameda Reuse and Redevelopment Authority
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501-4456

TRUE COPY of Document Recorded on July 20, 2000 **as No.** 2000 215934
FIRST AMERICAN TITLE COMPANY
Sheryl Taylor

QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTIONS PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1471 FOR EAST HOUSING PORTION OF NAS ALAMEDA

This Deed is made this 17th day of July, 2000, by and between the **United States of America,** acting by and through the Department of the Navy, hereinafter called the **GRANTOR,** and the **Alameda Reuse and Redevelopment Authority,** a Joint Powers Authority established by the City of Alameda and County of Alameda under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (Government Code Section 6500 et seq.), hereinafter called the **GRANTEE.**

WITNESSETH:

WHEREAS, the GRANTEE has requested conveyance from the GRANTOR of a portion of the former Naval Air Station Alameda, ("NAS Alameda") which was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Pub. L. No. 101-510) and which is no longer required for military purposes; and

WHEREAS, the GRANTOR is authorized to convey property at NAS Alameda to the GRANTEE pursuant to Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, 10 U.S.C. Section 2687 note); as amended by Section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65); and

WHEREAS, the GRANTOR has completed remedial actions on the property at NAS Alameda to be conveyed to GRANTEE that are necessary to provide the covenants required by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. Section 9620 (h)(3)(A)(ii)(I); and

WHEREAS, the GRANTOR has found and determined that the property at NAS Alameda to be conveyed to GRANTEE is suitable for transfer pursuant to a Finding of Suitability for Transfer, (FOST) dated April 19, 2000; and

WHEREAS, GRANTOR has determined pursuant to applicable Federal statutes and regulations and California Civil Code Section 1471(c) that it is reasonably necessary to impose certain restrictions on the use of the Property to protect present and future human health or safety or the environment as a result of the presence of hazardous materials on portions of the Property described hereinafter with particularity.

NOW THEREFORE, the GRANTOR, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever quitclaim to the GRANTEE, all of GRANTOR'S right, title and interest in and to that certain real property, comprising approximately 73 acres, more or less (hereinafter "Property"), as more particularly described in Exhibit "A."

I. **TOGETHER WITH** all buildings and improvements located thereon, and all rights, tenements, hereditaments, and appurtenances belonging, or in any wise appertaining, including fixtures, structures, mineral rights, water rights, the banks, beds and waters of any streams, rivers or lakes upon said Property, appurtenant easements, rail lines and utility lines, alleys, roads, streets ways, strips, gores or railroad rights of way upon said Property, and any means of ingress and egress appurtenant thereto.

II. **SUBJECT TO THE FOLLOWING NOTICES, COVENANTS, RESTRICTIONS, AND CONDITIONS**, which shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity:

A. The GRANTEE agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances of record.

B. Except as otherwise provided herein, or as otherwise provided by law, the GRANTEE acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of the GRANTOR regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation required to be undertaken by GRANTOR, the GRANTEE further acknowledges that the GRANTOR shall not be liable for any latent or patent defects in the Property except to the extent required by applicable law.

C. To the extent that any portion of the Property lies within a floodplain as defined in Section 6(c) of Executive Order No. 11988, dated May 24, 1977, the use of that portion of the Property may be subject to the National Flood Insurance Program.

D. LEAD BASED PAINT (LBP).

1. The Property may include improvements that are presumed to contain LBP because they are thought to have been constructed prior to 1978. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Pursuant to 40 CFR Section 745.113 the following notice is provided; "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. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

2. The GRANTEE hereby acknowledges the required disclosure of the presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978 in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (Title X). The GRANTEE acknowledges the receipt of available records and reports pertaining to LBP and/or LBP hazards and receipt of the Environmental Protection Agency (EPA) approved pamphlet "Protect Your Family from Lead in Your Home" (EPA 747-K-94-001). Furthermore, the GRANTEE acknowledges that it has read and understood the EPA pamphlet.

3. The GRANTEE covenants and agrees that, in any improvements on the Property defined as target housing by Title X and constructed prior to 1978, LBP hazards will be disclosed to potential occupants in accordance with Title X before use of such improvements as a residential dwelling (as defined in Title X). Further, the GRANTEE covenants and agrees that LBP hazards in target housing will be abated in accordance with Title X before use and occupancy as a residential dwelling. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six [6] years of age resides, or is expected to reside, in such housing) or any zero-bedroom dwelling.

4. The GRANTEE covenants and agrees that in its use and occupancy of the Real Estate, it will comply with Title X and all applicable Federal, State, and local laws relating to LBP. The GRANTEE acknowledges that the GRANTOR assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE, 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 LBP on the Property, arising after the conveyance of the Property from the GRANTOR to the GRANTEE, whether the GRANTEE has properly warned, or failed to properly warn, the persons injured.

5. The GRANTOR shall provide a Notice of Release, in recordable form, to the GRANTEE at such time as demolition of the buildings on the Property containing LBP has been completed and the appropriate Federal or State regulatory agency(s) have concurred in writing that LBP has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable Federal, State, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to LBP from the Property.

E. ASBESTOS CONTAINING MATERIALS.

1. The GRANTEE is hereby informed and does acknowledge that asbestos or asbestos containing materials ("ACM") have been found and are otherwise presumed to exist in buildings and structures on the Property. The GRANTEE acknowledges receipt of documentation disclosing the presence of any known ACM in the buildings and structures on the Property. The GRANTEE covenants that it will prohibit occupancy of buildings and structures, or portions thereof, containing known ACM prior to abatement of the ACM or demolition of the building or structure.

2. The GRANTEE covenants and agrees that in its use and occupancy of the Property, including but not limited to demolition of buildings containing ACM, it will comply with all applicable Federal, State and local laws relating to ACM. The GRANTEE acknowledges that the GRANTOR assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or activity causing or leading to contact of any kind whatsoever with ACM in the structures on the Property, arising after the conveyance of the Property from the GRANTOR to the GRANTEE, whether the GRANTEE has properly warned, or failed to properly warn the persons injured.

3. The GRANTOR shall provide a Notice of Release, in recordable form, to the GRANTEE at such time as demolition of the buildings on the Property containing ACM has been completed and the appropriate Federal or State regulatory agency(s) have certified in writing that ACM has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable Federal, State, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to ACM from the Property.

F. NOTICES AND COVENANTS:

1. Notices:

a. Finding of Suitability to Transfer. A Finding of Suitability to Transfer (FOST) has been completed and an Environmental Baseline Survey ("EBS") report is referenced in the FOST. The FOST and EBS reference environmental conditions on the Property and on other property not subject to this Deed. The FOST sets forth the basis for the GRANTOR's determination that the Property is suitable for transfer, The GRANTEE is hereby made aware of the notifications contained in the FOST and EBS.

b. Hazardous Substance Notification. Pursuant to CERCLA 42 U.S.C. Section 9620(h), notice is hereby provided that the information set out in Exhibit "B", attached hereto and made a part hereof, identifies hazardous substances that were stored for one year or more, known to have been released, or disposed of on this Property. The GRANTOR has made a complete search of its files and records concerning the Property and found that the FOST provides: (1) a notice of the type and quantity of such hazardous substances, (2) notice of the time the storage, release, or disposal took place, and (3) a description of the remedial action taken, if any.

2. Grant of Covenant [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(I)]. The GRANTOR covenants that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken before the date of transfer.

3. Additional Remediation Obligation [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(II)]. The GRANTOR covenants and warrants that GRANTOR shall conduct any additional remedial action necessary after the date of transfer for any hazardous substance existing on the Property prior to the date of this Deed. This covenant shall not apply to the extent that the GRANTEE caused or contributed to any release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative.

4. Access [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(iii)]. In accordance with CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(iii), GRANTOR reserves the right of access to and use of the Property in any case in which a remedial or corrective action is found to be necessary after the date of the conveyance of the Property. In exercising these rights of access, except in the case of imminent and substantial endangerment to human health or the environment, the GRANTOR (a) shall give the GRANTEE reasonable prior written notice of actions to be taken related to such remedial or corrective actions on the Property, and (b) make reasonable efforts to minimize interference with the ongoing use of the Property. Furthermore, the GRANTOR and GRANTEE agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and the GRANTEE's use of the Property. Any inspection, survey, investigation, or other response, corrective or remedial action undertaken by the GRANTOR will, to the maximum extent practicable, be coordinated with representatives designated by the GRANTEE.

5. Environmental Restriction.

The following environmental covenants, conditions, and restrictions (hereinafter "environmental restrictions") regarding the use of the Property have been determined by the GRANTOR in this Covenant to be reasonably necessary to protect present or future human health or safety or the environment as provided by CERCLA and California Civil Code Section 1471. The environmental restrictions made and accepted herein by GRANTEE shall be for the benefit of and enforceable by the GRANTOR herein as provided under Civil Code Section 1471 and applicable Federal statutes and regulations, shall run with the land, and shall be binding on the GRANTEE, its successors and assigns.

These environmental restrictions may be released at such time as the GRANTOR has obtained written confirmation from California Department of Toxic Substances Control ("DTSC") that the appropriate regulatory agency has determined that the restricted Property is protective of present or future human health or safety of the environment for the use that was formerly prohibited. Upon receipt of such written confirmation, the GRANTOR shall deliver to the GRANTEE in recordable form, a release (the "Release") relating specifically to the environmental use restrictions set forth in this deed. The execution of the Release by the GRANTOR shall remove all notices and restrictions relating to the remedy addressed by the restrictions from the title to the Property.

a. MARSH CRUST/SUBTIDAL ZONE SOIL MANAGEMENT REQUIREMENTS. "Marsh Crust" is defined as the underground layer that is the remnant of the tidal marsh that existed along the shoreline of Alameda Island before filling to create additional dry land. "Subtidal Zone" is defined as the underground layer that is the pre-filling San Francisco Bay floor extension of the historic marsh. These layers form a single continuous underground layer that extends Bayward of the original mean high tide line of Alameda Island before filling and contains hazardous materials and hazardous substances, pollutants, and contaminants that were retained in the historic marsh and Subtidal Zone before filling. The GRANTEE covenants and agrees that it shall comply with City of Alameda Ordinance No. 2824 regarding Excavation Into the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility. In the event that DTSC has notified the City that the Ordinance does not protect human health or safety or the environment, then GRANTEE covenants and agrees that it shall not excavate below the "threshold depth" as defined in the Excavation Ordinance, without prior written approval of DTSC. GRANTEE will record that certain Covenant to Restrict Use of Property (Environmental Restrictions) (the "State Covenant"), in substantially the same form as Exhibit "C" attached hereto, by and between the City of Alameda, as Covenantor, and the California Environmental Protection Agency - Department of Toxic Substances Control (DTSC), as Covenantee, which sets forth restrictions applicable to the Marsh Crust/Subtidal Zone covered by this paragraph, prior to conveying the Property. GRANTOR and GRANTEE intend that the restrictions set out in this paragraph, which are enforceable by the GRANTOR, shall be interpreted in a manner that is consistent and not in conflict with the restrictions set forth in the State Covenant which is enforceable by DTSC. A failure to enforce the State Covenant by DTSC shall not preclude the GRANTOR from enforcing this restriction.

G. INDEMNIFICATION REGARDING TRANSFEREES

The GRANTOR hereby recognizes its obligations under Section 330 of the National Defense Authorization Act of 1993 (Pub. L. 102-484), as amended, regarding indemnification of transferees of closing Department of Defense property.

H. NON-DISCRIMINATION. GRANTEE covenants not to discriminate upon the basis of race, color, religion, disability, sex, age or national origin in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. 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 locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

III. THE CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS set forth in this deed, unless subsequently released, are a binding servitude on the Property; shall inure to the benefit of the GRANTOR and GRANTEE, their successors and assigns, and will be deemed to run with the land in perpetuity.

IV. LIST OF EXHIBITS: The following exhibits are attached hereto and made a part of this Quitclaim Deed:

A. Exhibit "A" - Legal Descriptions and Plats of the Property.
B. Exhibit "B" - CERCLA Notice pertaining to Property.
C. Exhibit "C" - Draft State Covenant

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the GRANTOR has caused its name to be signed to these presents by an authorized Real Estate Contracting Officer on the day first above written.

UNITED STATES OF AMERICA,
acting by and through the Department of the Navy,

BY: _____
WILLIAM R. CARSILLO
Real Estate Contracting Officer

ACCEPTANCE:

The **GRANTEE** hereby accepts this Deed and agrees to be bound by all the agreements, covenants, conditions, restrictions and reservations contained therein.

ALAMEDA REUSE & REDEVELOPMENT AUTHORITY

BY: Jeffrey T. Bond for
JEFFREY T. BOND Agent for **JAMES M. FLINT**
Executive Director

Date: July 17, 2000

.LE 3

Notice of Hazardous Substance Stored, Released, or Disposed of at Parcels 170 and 171

(Page 1 of 1)

Notice is hereby given that the information provided below contains a notice of hazardous substances that are known to have been stored for more than 1 year or known to have been released or disposed of on certain portions of the FOST area and the dates that such storage, release, or disposal took place. 40 CFR Section 373.3(b) requires that the afore-mentioned statement be prominently displayed in this notice. The information contained in this notice is required und the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as "Superfund") 42 USC section 9620(h). Chemicals specifically excluded from consideration were incidental quantities of household-type cleaning chemicals and consumer office products. It should be noted that only minimal information regarding hazardous materials was available, therefore, the periods that these materials were stored is uncertain, unless specifically stated.

Parcel Number	Building or Lot Number	Facility Name	Hazardous Substance(s)	CAS Number	Regulatory Synonym	RCRA Waste Number	Quantity	Date(s) of Storage, Release, or Disposal (if known)	Stored (S), Released (R), or Disposed of (D)	Remarks
170	N/A	Family Housing	Durban 2E	None	None	-	2 gallons	10/92-10/93	S	Weekly application
			Ficam W	22781-23-3	Bendiocarb; Fuam; FICAM D; Ficam Plus	-	3 boxes	10/92-10/93	S	
			Drione	None	None	-	1 pound	10/92-10/93	S	
			Talon G	None	None	-	30 pounds	10/92-10/93	S	
			PT 515	None	None	-	24 cans	10/92-10/93	S	
	No release or disposal identified.									
171		Family Housing	Durban 2E	None	None	-	2 gallons	10/92-10/93	S	Weekly application
			Ficam W	22781-23-3	Bendiocarb; Fuam; FICAM D; Ficam Plus	-	3 boxes	10/92-10/93	S	
			Drione	None	None	-	1 pound	10/92-10/93	S	
			Talon G	None	None	-	30 pounds	10/92-10/93	S	
			PT 515	None	None	-	24 cans	10/92-10/93	S	
	No release or disposal identified.									

Notes:

- = The substance is not a waste, therefore the RCRA waste number does not apply

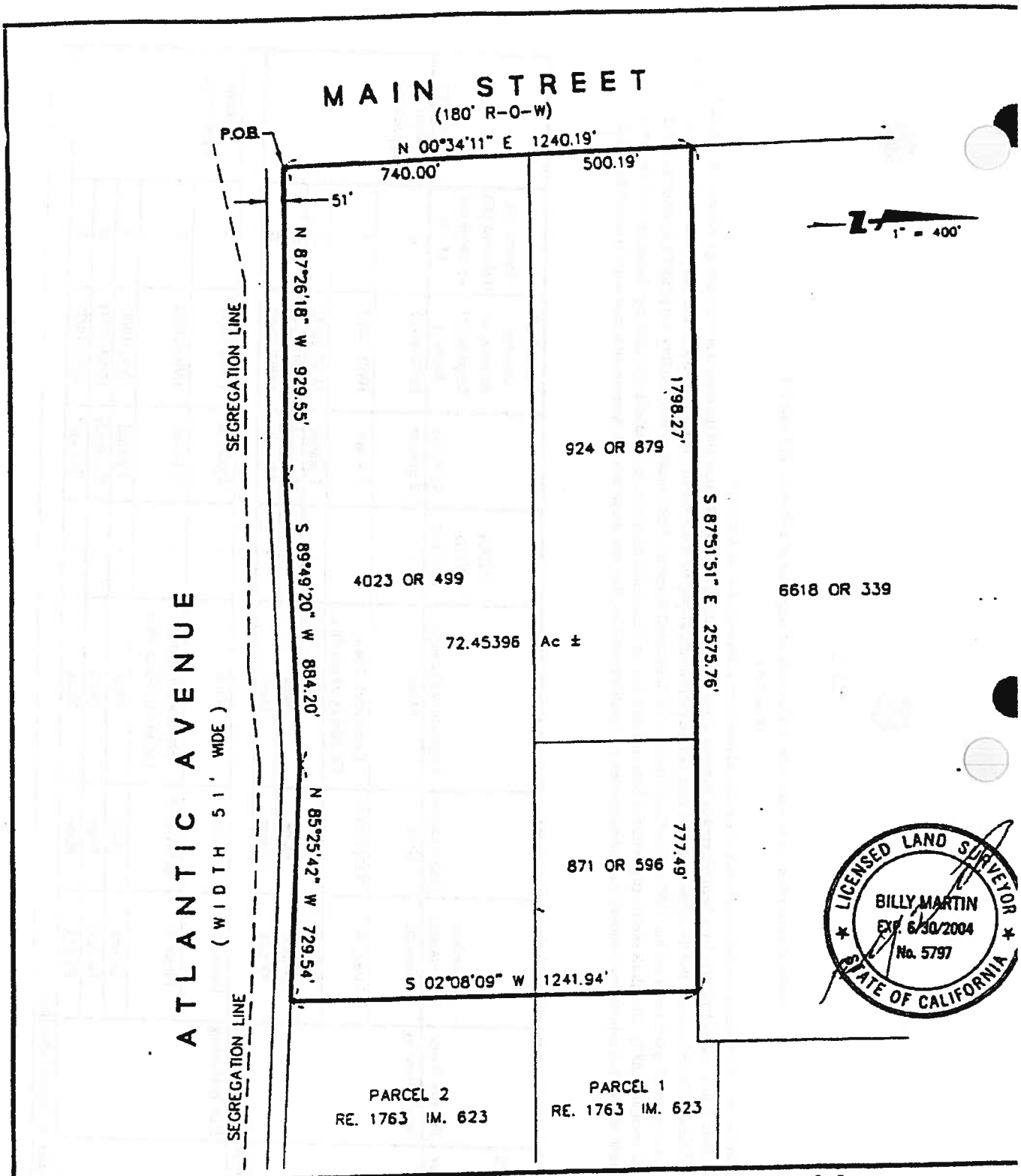
CAS = Chemical abstract service

NA = Not applicable. The substance given is either a class of compounds, a mixture of substances, or not a chemical. Therefore, regulatory synonyms and CAS numbers are not available.

None = No RCRA Waste number found, or no regulatory synonyms identified for this substance

RCRA = Resource Conservation and Recovery Act

Exhibit B
East Housing Quit Claim Deed



Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "B"
EAST HOUSING

Job No. 980221-10
By SPM Date 5-11-00 Chkd.
SHEET 1 OF 1

PATH: J:\Sur98\980221\DWG\Plats\
DWG NAME: ehouse

DATE: 5/11/2000
TIME: 1:58 p.m.

2000215936
OFFICIAL RECORDS OF
ALAMEDA COUNTY
PATRICK O'CONNELL

07/20/2000 01:45 PM
RECORDING FEE: 0.00

40 PGS

RECORDING REQUESTED BY
FIRST AMERICAN TITLE

592733

Recording Requested by:

City of Alameda or Alameda Reuse
and Redevelopment Authority
Economic Development Division
950 West Mall Square, #215
Alameda, CA 94501
Attn: Jeffrey T. Bond

When Recorded, Mail to:

Department of Toxic Substances Control
10151 Croydon Way, Suite 3
Sacramento, CA 95827-2106
Attention: A. J. Landis, P.E., Chief
Office of Military Facilities

COVENANT
TO RESTRICT USE OF PROPERTY
(ENVIRONMENTAL RESTRICTIONS)

Fleet and Industrial Supply Center, Oakland
Alameda Facility and Alameda Annex
and
Alameda Naval Air Station East Housing
Alameda, California

This Covenant To Restrict Use of Property ("Covenant") is made on the 17 day of July, 2000 by the City of Alameda or Alameda Reuse and Redevelopment Authority ("City" or "ARRA" or "Covenantor"), which is the current owner of the property restricted by this Covenant, and the California Environmental Protection Agency - Department of Toxic Substances Control (the "Department" or "Covenantee").

RECITALS/STATEMENT OF FACTS

A. Covenantor is the owner of record of that certain real property consisting of approximately 210 acres (the "Property") situated in the City of Alameda, County of Alameda, State of California. The Property formerly was part of the United States Navy installation commonly known as the Fleet and Industrial Supply Center, Oakland, Alameda Facility and Alameda Annex and the adjacent part of the former Alameda Naval Air Station commonly

known as East Housing. A legal description of the Property is set forth in Exhibit A and is incorporated herein by this reference. A figure depicting the location of the Property is set forth in Exhibit B and is incorporated herein by this reference.

B. The Property was formerly owned by the United States Navy.

C. The Navy has caused to be completed environmental response actions on and in connection with the Property. Such actions include, but are not limited to, preparation of a Removal Action Workplan for Marsh Crust at East Housing Area, Alameda Point ("RAW") that has been approved by the Department, and the implementation of response actions pursuant to the RAW that allow the Property to be used without significant risk to human health and without significant potential for future environmental damage.

D. Pursuant to California Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health and safety or the environment as a result of the potential presence of hazardous materials, as defined in California Health and Safety Code section 25260, in the marsh crust and the shallowest groundwater zone, as defined below, under the surface of land at the Property. The Department has also determined that such protection is part of the remedy contemplated in the RAW. The Covenantor and the Department therefore intend that the use of the Property be restricted as set forth in this Covenant to protect human health, safety and the environment.

E. The Property is planned for mixed uses including residential use. Before 1920, the Property and surrounding areas were undeveloped tidal marsh along Alameda Island's San Francisco Bay shoreline. Between approximately 1900 and 1940, the Property and surrounding areas were filled with sand and clay material from unknown sources.

F. "Marsh crust" means the underground layer that is the remnant of the tidal marsh that existed along the shoreline of Alameda Island before filling to create additional dry land. In many places, this layer contains hazardous materials from former industrial discharges that were retained in the historic marsh before filling. These hazardous materials include petroleum hydrocarbons (TPH) and polynuclear aromatic hydrocarbons (PAHs). The marsh crust is a continuous underground layer, at depths of 5 to 20 feet from the surface, that extends bayward of

the original mean higher high tide line of Alameda Island, before filling, throughout the area that was filled.

G. The "shallowest groundwater zone" is in the fill at the Property, is first encountered at depths from 4 to 8 feet below ground surface (bgs) and extends to a maximum depth of approximately 20 feet bgs. The shallowest groundwater zone does not include any deeper groundwater zone that is hydraulically separated from the fill. In particular, the shallowest groundwater zone does not include the "Merritt Sand" zone, which is first encountered at approximately 10 to 105 feet bgs and is hydraulically separated from the fill by Bay Mud, the thickness of which ranges from 5 to 95 feet at the Property. The shallowest groundwater zone is currently not usable for drinking water because of the presence of naturally occurring inorganic constituents (total dissolved solids and some metals). Because of this intrinsic use limitation of the groundwater, the contamination of organic constituents (volatile organic compounds, TPH, and PAHs) related to former activities at or in the vicinity the Property, may, at this time, remain in place provided there are sufficient controls and restrictions to protect the public health, safety, and the environment.

ARTICLE I.
ADDITIONAL DEFINITIONS

1.1 Occupant(s). "Occupant(s)" means any person or entity entitled by ownership, leasehold, or other legal relationship to occupy any portion of the Property.

1.2 Owner(s). "Owner(s)" means the Covenantor, its successors in interest and their successors in interest, including heirs and assigns, who at any time hold fee title to all or any portion of the Property.

1.3 Excavation ordinance. "Excavation ordinance" means City of Alameda Ordinance No. 2824, a copy of the current version of which is attached as Exhibit C and incorporated herein by this reference.

1.4 Threshold depth. "Threshold depth" is the elevation above which there is little likelihood that hazardous materials from the marsh crust would have mixed during filling. The threshold depth for any location at the Property is shown on an exhibit to the Excavation

ordinance and will be derived from the RAW or other applicable remedial decision document.

1.5 Permitted excavation. "Permitted excavation" means (i) excavation performed in accordance with a City permit approved and issued pursuant to the excavation ordinance when such permit is required under the terms of the excavation ordinance; or (ii) if the excavation ordinance has been repealed or the Department has made a written determination pursuant to subsection 3.2 that the excavation ordinance does not comport with the intent of this Covenant, excavation performed in accordance with a written approval issued by the Department.

1.6 Department. "Department" means the California Environmental Protection Agency, Department of Toxic Substances Control and its successor agencies, if any.

ARTICLE II.
GENERAL PROVISIONS

2.1 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion of the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to California Health & Safety Code section 25355.5(a)(1)(C) and California Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion of the Property.

2.2 Binding Upon Owners/Occupants. Pursuant to California Health & Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, and their heirs, successors and assignees, and their agents, employees, and lessees. Pursuant to California Civil Code section 1471(b), all Owners of the Property are expressly bound by this Covenant for the benefit of Covenantee.

2.3 Incorporation into Deeds and Leases. The Restrictions set forth in this Covenant shall be incorporated by reference in each and all deeds, leases and subleases of any portion of the Property.

2.4 Conveyance of Property. The Owner(s) shall provide a notice to the Department not later than thirty (30) days after any sale, lease or other conveyance of the Property or a real property estate in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by these provisions, have authority to approve, disapprove, or otherwise affect any such sale, lease or other conveyance of the Property or estate except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

2.5 Written Notification. Upon a determination that a hazardous substance is present upon or beneath nonresidential real property, a notification must be made pursuant to California Health & Safety Code section 25359.7. Specifically, prior to the sale or lease of nonresidential real property, the owner or lessor shall give the buyer or lessee notice that a hazardous substance is located on or beneath the Property.

ARTICLE III.
RESTRICTIONS/ENFORCEMENT

3.1 Applicability. The provisions of this Article shall apply to the Property described in Exhibit A and shown on Exhibit B.

3.2 Prohibited Activities. The following activities are prohibited on the Property:

a. Construction of any water well screened for the extraction of water from the shallowest groundwater zone (as defined above) except as provided in this Covenant;

b. Extraction (except for necessary construction site dewatering), utilization or consumption of water from the shallowest groundwater zone for use other than irrigation or emergency use , e.g. firefighting;

c. Disposal of extracted groundwater from construction site dewatering into the waters of the state except in compliance with the requirements of the Regional Water Quality Control Board, San Francisco Bay Region; and

d. Engaging in any excavation below the threshold depth without a City excavation permit. If the excavation ordinance has been repealed, or if the Department has

made a written determination with thirty (30) days prior written notice to the City that the excavation ordinance does not comport with the intent of this Covenant, then a permitted excavation may be conducted only in accordance with a written approval issued by the Department. Covenantor's application for such an approval shall be submitted to the Department and shall otherwise comply with the permit application requirements of the last version of the excavation ordinance or such other requirements as the Department may specify.

3.3 Access For Department. The Department shall have a reasonable right of entry and access to the outdoor areas of the property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department to protect the public health or safety, or the environment.

3.4 Enforcement. Failure of the Covenantor, or Owner(s)/Occupant(s) to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner(s)/Occupant(s) remove any wells constructed or to close or otherwise remedy any excavation conducted in violation of the prohibited activities stated in subsection 3.2 of this Covenant. Violations of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE IV.
VARIANCE AND TERMINATION

4.1 Variance. Covenantor or any other aggrieved person may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with California Health & Safety Code section 25233.

4.2 Termination. Covenantor or any other aggrieved person may apply to the Department for a termination of some or all of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with California Health & Safety Code section 25234.

4.3 Term. Unless terminated in accordance with subsection 4.2 above, by law or by the Department in the exercise of its discretion, this Covenant shall continue in effect in

perpetuity.

ARTICLE V.
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion of the Property to the general public or anyone else for any purpose whatsoever.

5.2 Department References. All references to the Department include successor agencies/departments or other successor entity.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or, (ii) three (3) business days after deposit in the mail if mailed by United States mail, postage paid and certified, return receipt requested:

To: "Covenantor":
City of Alameda or Alameda Reuse and Redevelopment Authority
Economic Development Division
950 West Mall Square, #215
Alameda, CA 94501
Attention: Jeffrey T. Bond

To: "Department":
Department of Toxic Substances Control
10151 Croydon Way, Suite 3
Sacramento, CA 95827-2106
Attention: A. J. Landis, P.E., Chief
Office of Military Facilities

Any party may change its address or the individual to whose attention a notice is to be sent by giving notice in compliance with this paragraph.

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth in this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion found invalid had not been included in this Covenant.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Northern California Coastal Cleanup Operations Branch Chief, California Department of Toxic Substances Control. This instrument, with all referenced Exhibits, shall be recorded by the Covenantor in the County of Alameda within fifteen (15) days of the date of execution by both parties.

5.6 Statutory References. All statutory references include successor provisions.

5.7 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into this Covenant and to execute and legally bind that party to this Covenant.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER: City of Alameda

By: _____
James M. Flint
Title: City Manager

Date: 7-14-2010

Approved as to Form
CITY ATTORNEY

By: _____

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: _____
Anthony J. Landis, P.E.
Title: Chief, Office of Military Facilities

Date: _____

Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Northern California Coastal Cleanup Operations Branch Chief, California Department of Toxic Substances Control. This instrument, with all referenced Exhibits, shall be recorded by the Covenantor in the County of Alameda within fifteen (15) days of the date of execution by both parties.

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IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER: City of Alameda

By: _____
James M. Flint
Title: City Manager

Date: _____

Approved as to Form
CITY ATTORNEY

By: _____

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: Anthony J. Landis
Anthony J. Landis, P.E.

Title: Chief, Office of Military Facilities

Date: 7-13-00

OWNER: Alameda Reuse and Redevelopment Authority

By: _____

James M. Flint

Title: Executive Director

Date: 7-14-2010

Approved as to Form
GENERAL COUNSEL

By: _____

STATE OF CALIFORNIA)
COUNTY OF Sacramento)

On July 13, 2000 before me, a Notary Public in and for State of California, personally appeared Anthony J. Landis, 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 she executed the same in her authorized capacity, and that by her signature on the instrument, the Department of Toxic Substances Control executed the instrument.

WITNESS my hand and official seal.

Toni Ione Malik

Notary's Signature

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TONI IONE MALIK
COMM. #1121781
Notary Public-California
SACRAMENTO COUNTY
My Comm. Exp. Jan. 9, 2001
BMP1

STATE OF CALIFORNIA)
)
COUNTY OF Alameda)

On July 14, 2000 before me, a Notary Public in and for State of California, personally appeared James M. Flint, 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 she/he executed the same in his authorized capacity, and that by her/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.

Lara Weisiger

Notary's Signature

LARA WEISIGER
Commission # 1151643
Notary Public - California
Alameda County
My Comm. Expires Aug 16, 2001

My Comm. Exp. 8-16-2001

STATE OF CALIFORNIA)
)
COUNTY OF Alameda)

On July 14, 2000 before me, a Notary Public in and for State of California, personally appeared James M. Flint, 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 she/he executed the same in his authorized capacity, and that by her/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.

Lara Weisiger

Notary's Signature

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LARA WEISIGER
Commission # 1151643
Notary Public - California
Alameda County
My Comm. Expires Aug 16, 2001

My Comm. Exp. 8-16-2001

Exhibit A

Alameda Naval Air Station
East Housing

A parcel of land being a portion of the Alameda Naval Air Station, Alameda, California, lying in the city and county of Alameda, State of California, and being all of the parcel described in that certain deed recorded June 18, 1963 in Reel 924 of Official Records at Image 879, Alameda County Records, and being all of the parcel described in that certain deed recorded April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records, and being a portion of the parcel described in that certain deed recorded March 28, 1941 in Book 4023 of Official Records at page 499, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the northerly line of Atlantic Avenue, being 51 feet wide, and the easterly line of Main Street as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, in the Office of the Recorder of Alameda County:

1. Thence along said easterly line of Main Street and the westerly boundary line of the parcel described in that certain deed recorded March 28, 1941 in Book 4023 of Official Records at page 499, Alameda County Records, North 00°34'11" East, 1240.19 feet to the northerly line of the parcel described in that certain deed recorded on June 18, 1963 in Reel 924 of Official Records at Image 879, Alameda County Records;

2. Thence leaving said easterly line of Main Street along said northerly line of the parcel described that certain deed recorded on June 18, 1963 in Reel 924 of Official Records at Image 879, Alameda County Records, South 87°51'51" East, 1798.27 feet to the northwesterly corner of the parcel described in that certain deed recorded on April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records;

3. Thence along the northerly line of the parcel described in that certain deed recorded on April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records, South 87°51'51" East, 777.49 feet to the northeasterly corner of said parcel;

4. Thence leaving said line and along the easterly line of the parcel described in that certain deed recorded on April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records, and its southerly prolongation, South 02°08'09" West, 1241.94 feet to the northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, Alameda County Records;

5. Thence westerly along said northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, North 85°25'42" West, 729.54 feet;

6. Thence continuing westerly along said northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, South 89°49'20" West, 884.20 feet;

7. Thence continuing westerly along said northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Maps at page 16 through 22, inclusive, North 87°26'18" West, 929.55 feet to the POINT OF BEGINNING.

Containing an area of 72.45396 acres, more or less.

Basis of Bearings:
Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS station "ALT FIFTH".All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

Billy Martin, P.L.S. 5797
Expires: 6/30/2004

LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

Dated: July 17, 2000

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FISC North

A parcel of land lying in the City and County of Alameda, State of California, and being a portion of Parcel 1 and Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records and a portion of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records more particularly described as follows:

BEGINNING at the most northwesterly corner of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records:

1. Thence along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North 86°38'46" East, 16.02 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504, Official Records Alameda County, being the TRUE POINT OF BEGINNING;

2. Thence continuing along the northerly line of said parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North 86°38'46" East, 402.97 feet;

3. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South 84°06'14" East, 567.60 feet;

4. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North 87°53'46" East, 726.00 feet;

5. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South 87°21'14" East, 858.00 feet;

6. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South 58°36'14" East, 153.54 feet to the most

northwesterly corner of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records;

7. Thence leaving said northerly line and along the westerly line of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records, South 15°28'16" West, 579.96 feet to the most northwesterly corner of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35;

8. Thence leaving said westerly line and along the northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South 31°40'14" East, 82.16 feet;

9. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South 81°24'14" East, 285.99 feet;

10. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South 88°00'44" East, 87.24 feet to the most northwesterly corner of Parcel B described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South 65°48'44" East;

11. Thence leaving said northerly line and along the westerly line of Parcel B described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 30050.01 feet, through a central angle of 0°12'27", for an arc length of 108.83 feet to a point on the southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South 13°02'54" West;

12. Thence leaving said westerly line along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 741.84 feet, through a central angle of 1°33'38", for an arc length of 20.21 feet to a point of compound curvature;

13. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 980.54 feet, through a central angle of 1°47'59", for an arc length of 30.80 feet to a point of compound curvature;

14. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 1457.97 feet, through a central angle of 1°12'01", for an arc length of 30.54 feet to the beginning of a non-tangent curve to the left from which point a radial line bears South 08°27'44" West;

15. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 2890.33 feet, through a central angle of 0°36'00", for an arc length of 30.27 feet;

16. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, North 82°06'43" West, 848.13 feet to a point on the southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records;

17. Thence leaving said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, and along said southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records, North 88°07'13" West, 422.49 feet to the most southeasterly corner of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;

18. Thence along said southerly of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, North 89°46'04" West, 1515.46 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County;

19. Thence along said easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County, North 0°30'14" West, 746.23 feet to the TRUE POINT OF BEGINNING;

Containing an area of 45.45148 acres, more or less.

Basis of Bearings:
Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS Station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

Billy Martin, P.L.S. 5797
Expires: 6/30/2004

Dated: July 17, 2000

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A parcel of land lying in the City and County of Alameda, State of California, and being a portion of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, and being all of Parcel 2 described in that certain deed recorded on September 2, 1948 in Book 5597 of Official Records at page 433 and being a portion of Parcel 1 described in that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on July 21, 1944 in Book 4499 of Official Records at page 401, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on June 29, 1944 in Book 4499 of Official Records at page 384, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on June 29, 1944 in Book 4499 of Official Records at page 316, Alameda County Records, and being a portion of Parcel 1 described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, and being a portion of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, and all of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, and all of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, and all of the parcel described in that certain deed recorded on September 16, 1959 in Book 9152 of Official Records at page 57, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the northerly line of Atlantic Avenue, being 51 feet wide, and the easterly line of Main Street as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, in the Office of the Recorder of Alameda County:

1. Thence along said easterly line of Main Street and the westerly boundary line of the parcel described in that certain deed recorded on March 28, 1941 in Book 4023 of Official Records at page 499, Alameda County Records, North 00°34'11" East, 1240.19 feet to the southerly line of the parcel described in that certain deed recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, and the TRUE POINT OF BEGINNING;

2. Thence continuing along said easterly line of Main Street, North 00°34'11" East, 596.74 feet;

3. Thence leaving said easterly line of Main Street, South 87°57'28" East, 1923.89 feet;

4. Thence North 02°47'17" East, 364.75 feet to a point on the southerly line of Parcel 1 described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records;

5. Thence along said southerly line of Parcel 1 as described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, South 87°12'43" East, 351.25 feet;

6. Thence leaving said southerly line of Parcel 1 as described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, North 2°47'17" East, 1161.09 feet;

7. Thence North 87°21'26" West, 426.49 feet to a point on the easterly line of the parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records;

8. Thence along said easterly line of the parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, North 2°47'17" East, 293.60 feet to the northeasterly corner of said parcel;

9. Thence along the northerly line of said parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, North 89°46'04" West, 1180.27 feet;

10. Thence continuing along the northerly line of said parcel described in that certain deed recorded August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, South 76°59'47" West, 30.74 feet;

11. Thence continuing along the northerly line of said parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, North 00°30'07" West, 15.37 feet;

12. Thence continuing along the northerly line of said parcel described in that certain deed recorded August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, South 76°59'47" West, 51.25 feet to a point on the easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County;

13. Thence along said easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County, North 00°30'13" West, 28.00 to the most northwesterly corner of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, being a point on a non-tangent curve to the right from which point a radial line bears South 17°36'08" East;

14. Thence leaving said easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County, and along the northerly line of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, along said curve having a radius of 955.37 feet, through a central angle of 1°14'55", for an arc length of 20.82 feet to a point of compound curvature;

15. Thence continuing along said northerly line of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, along said curve having a radius of 557.56 feet, through a central angle of 15°51'00", for an arc length of 154.24 feet;

16. Thence continuing along said northerly line of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, North 89°29'47" East, 183.18 feet to a point on the westerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records;

17. Thence along said westerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, North 00°42'53" West, 10.00 feet to the northwesterly corner of said parcel;

18. Thence along the northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, North 87°10'47" East, 238.51 feet to the beginning of a tangent curve to the right;

19. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, along said curve having a radius of 1136.01 feet, through a central angle of 3°03'09", for an arc length of 60.52 feet;

20. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, South 89°46'04" East, 1216.24 feet;

21. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, South 88°07'13" East, 367.67 feet to the beginning of a tangent of curve to the right;

22. Thence continuing along said northerly line of the parcel described in that certain deed recorded December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, along said curve having a radius of 563.14 feet, through a central angle of 6°00'30", for an arc length of 59.05 feet;

23. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, South 82°06'43" East, 335.29 feet to a point on the northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;

24. Thence along said northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, South 82°06'43" East, 505.98 feet to the beginning of a tangent curve to the right;

25. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 2867.82 feet, through a central angle of 00°36'00", for an arc length of 30.03 feet to a point of compound curvature;

26. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 1435.47 feet, through a central angle of 1°12'01", for an arc length of 30.07 feet to a point of compound curvature;

27. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 958.04 feet, through a central angle of 01°47'59", for an arc length of 30.09 feet to a point of compound curvature;

28. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 719.34 feet, through a central angle of 1°12'56", for an arc length of 15.26 feet to the most northerly corner of Parcel A described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South 66°03'48" East;

29. Thence along the westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 30,050.01 feet, through a central angle of 00°56'00", for an arc length of 489.48 feet to the beginning of a non-tangent curve to the left, from which point a radial line bears South 2°09'25" East;

30. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image

701, Alameda County Records, along said curve having a radius of 60.00 feet, through a central angle of 63°17'05", for an arc length of 66.28 feet to a point of compound curvature;

31. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 1222.09 feet, through a central angle of 31°53'47", for an arc length of 680.33 feet to a point of compound curvature;

32. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 1434.10 feet, through a central angle of 07°09'19", for an arc length of 179.09 feet to a point on the southerly line of that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records;

33. Thence along said southerly line of the parcel described in that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records, North 87°12'43" West, 332.59 feet to the northwesterly corner of that certain Parcel Map recorded on October 2, 1981 in Book 131 of Maps at page 1 through 2, inclusively, Alameda County Records;

34. Thence along the westerly line of that certain Parcel Map recorded on October 2, 1981 in Book 131 of Maps at page 1 through 2, inclusively, Alameda County Records, South 02°04'31" West, 464.06 feet to a point on the northerly line of the parcel described in that certain deed recorded on February 11, 1960 in Reel 25 of Official Records at Image 976, Alameda County Records;

35. Thence along said northerly line of the parcel described in that certain deed recorded February 11, 1960 in Reel 25 of Official Records at Image 976, Alameda County Records, North 87°55'29" West, 499.91 feet to the northwesterly corner of said parcel;

36. Thence leaving said northerly line and along the westerly line of the parcel described in that certain deed recorded on February 11, 1960 in Reel 25 of Official Records at Image 976, Alameda County Records, South 2°08'09" West, 624.82 feet to a point on the southerly line of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339;

37. Thence along said southerly line of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, North 87°51'51" West, 2730.99 feet to the TRUE POINT OF BEGINNING.

Containing an area of 100.14102 acres, more or less.

Basis of Bearings:
Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

LICENSED LAND SURVEYOR
BILLY MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

Billy Martin, P.L.S. 5797
Expires: 6/30/2004

Dated: July 13, 2000

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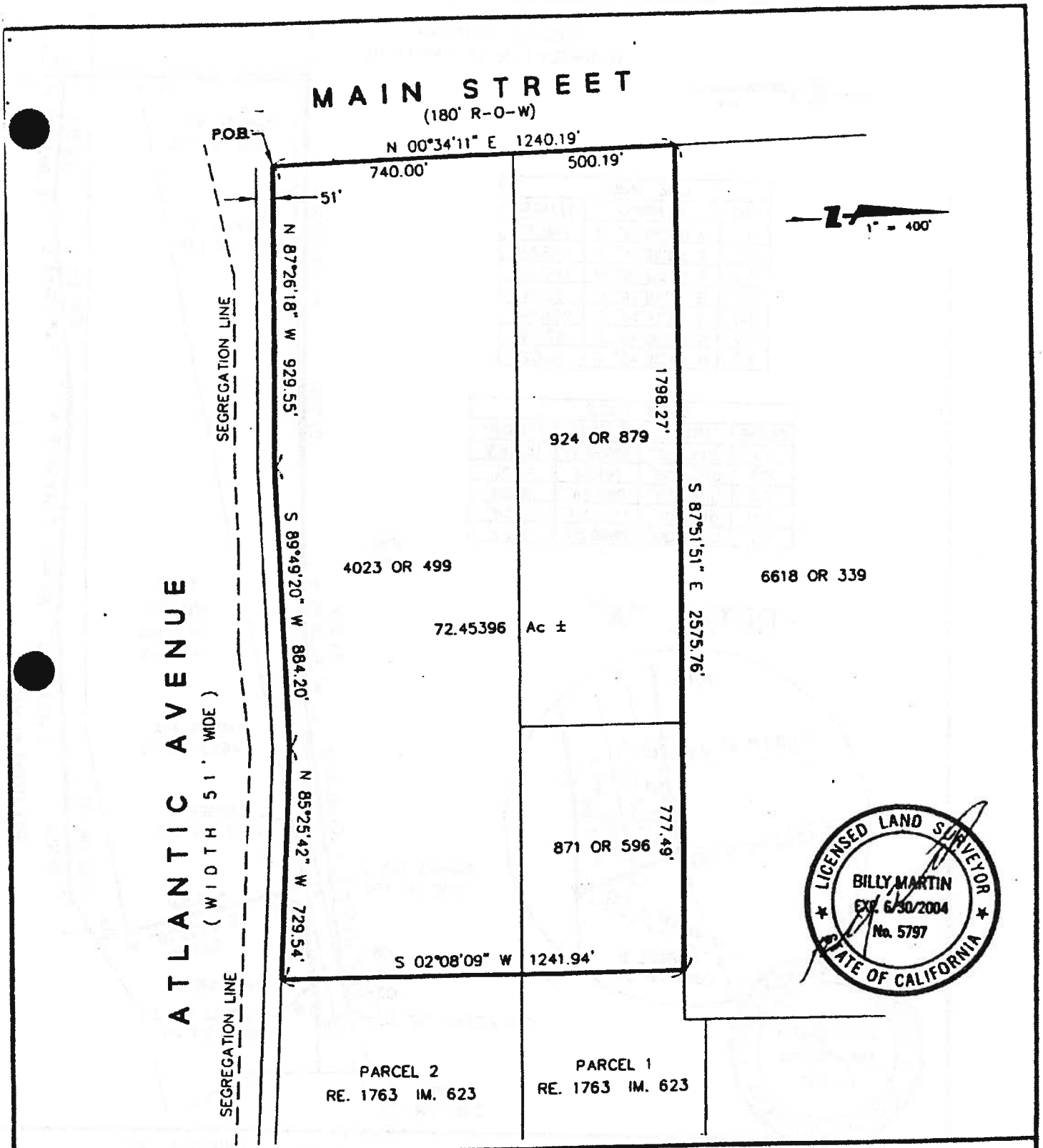


Brian Kangas Foulk
Engineers • Surveyors • Planners
540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "B"
EAST HOUSING
Job No. 980221-10
By SPM Date 5-11-00 Chkd. MP
SHEET 1 OF 1

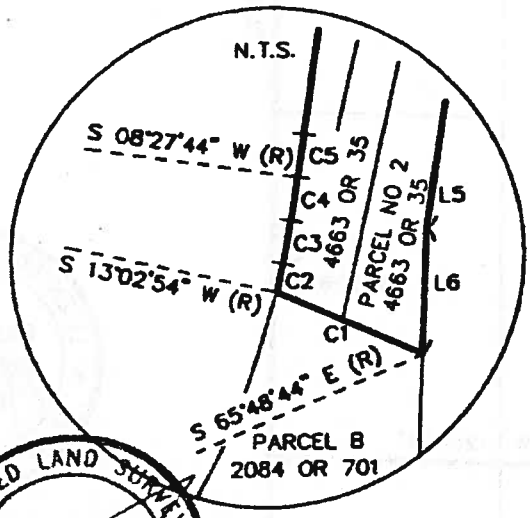
PATH: J:\Sur98\980221\DWG\Plats\
DWG NAME: ehouse

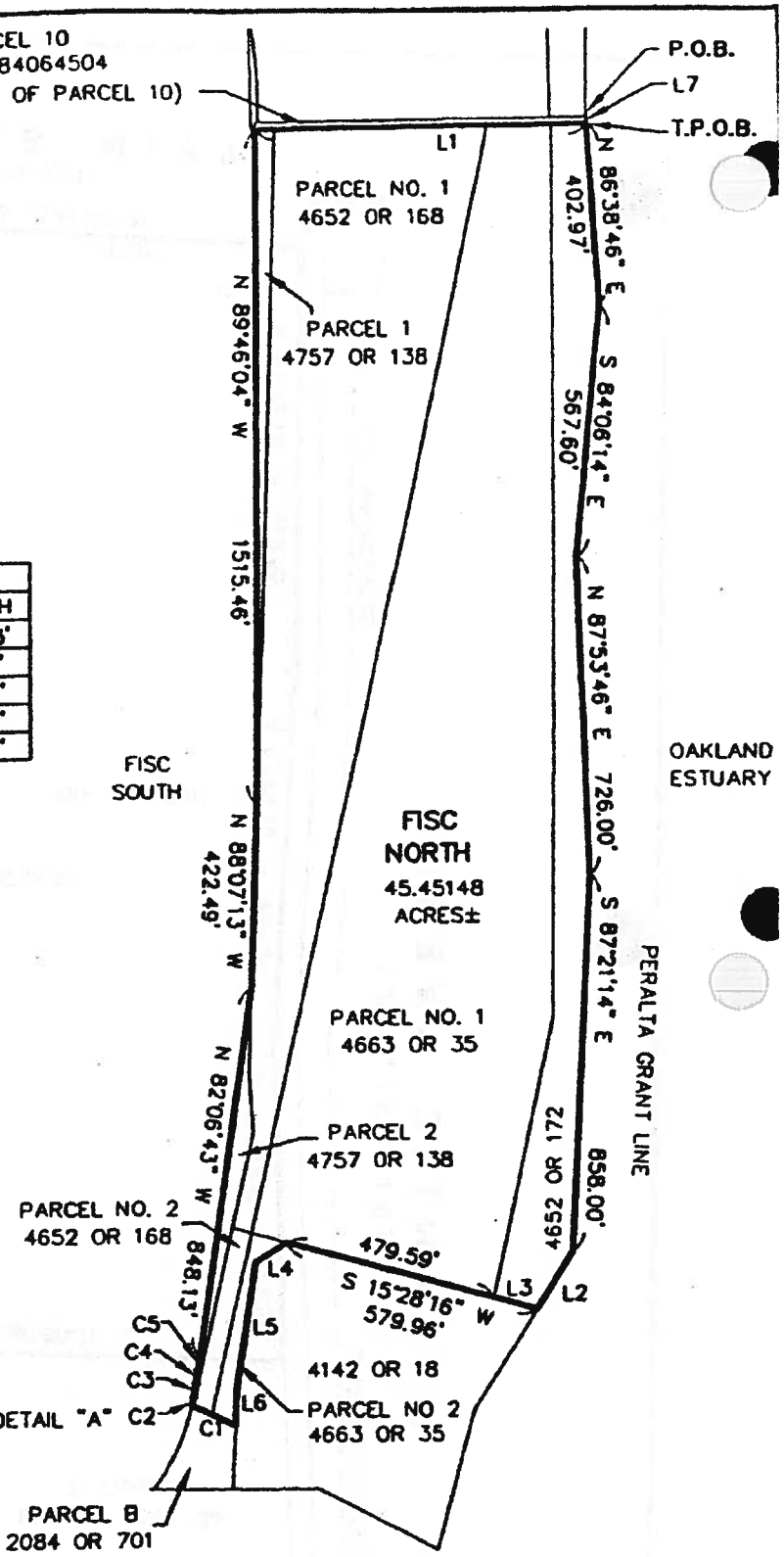
DATE: 5/11/2000
TIME: 1:58 p.m.

1" = 400'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 00°30'14" W	746.23'
L2	S 58°36'14" E	153.54'
L3	S 15°28'16" W	100.37'
L4	S 31°40'14" E	82.16'
L5	S 81°24'14" E	285.99'
L6	S 88°00'44" E	87.24'
L7	N 86°38'46" E	16.02'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	00°12'27"	30050.01'	108.83'
C2	01°33'38"	741.84'	20.21'
C3	01°47'59"	980.54'	30.80'
C4	01°12'01"	1457.97'	30.54'
C5	00°36'00"	2890.33'	30.27'





LICENSED LAND SURVEYOR
BILL MARTIN
EXP. 6/30/2004
No. 5797
STATE OF CALIFORNIA

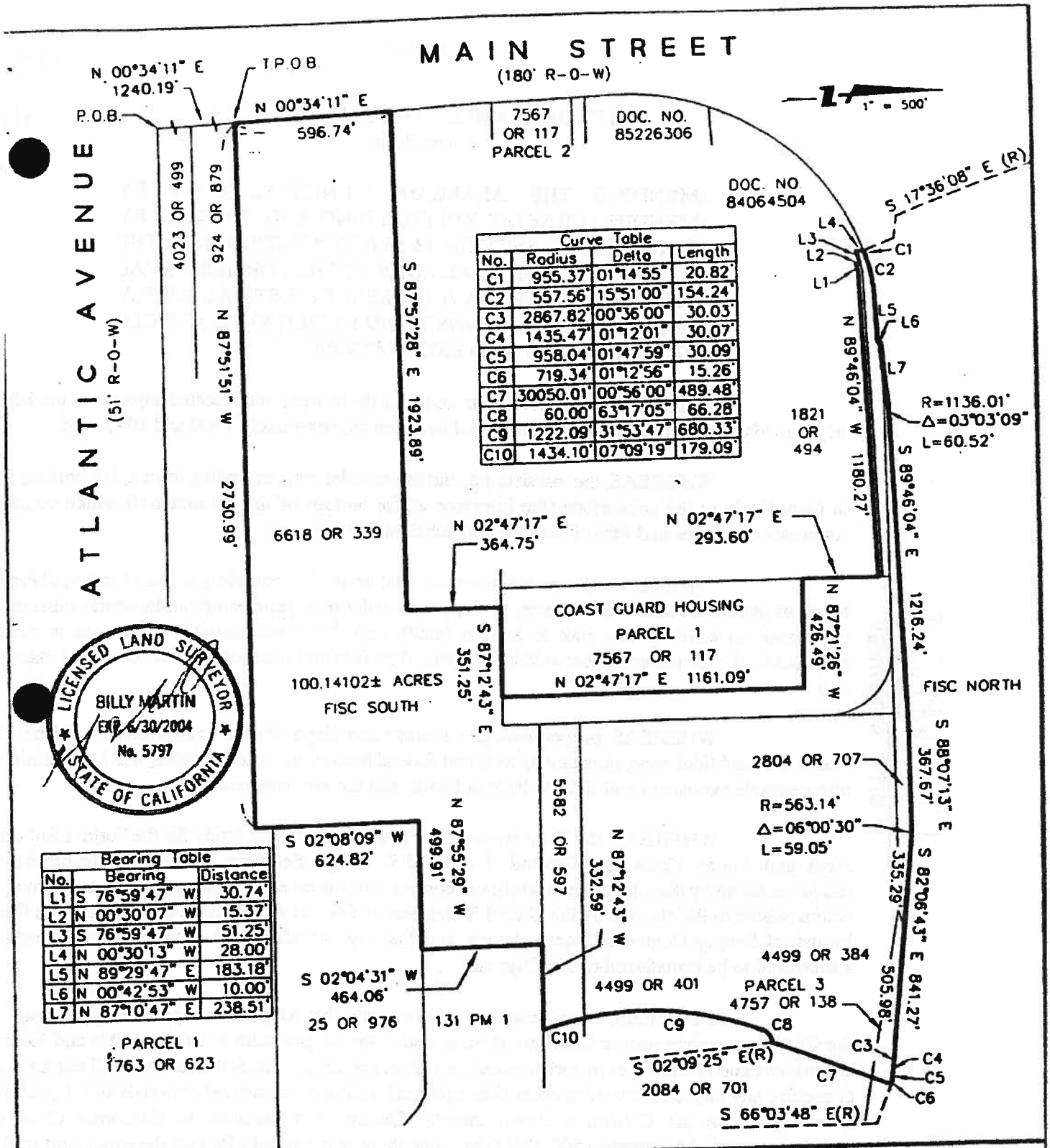
Brian Kangas Foulk
Engineers • Surveyors • Planners

540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

Subject EXHIBIT "B"
FISC NORTH
Job No. 980221-10
By RCS Date 05/15/00 Chkd. MP
SHEET 1 OF 1

PATH: J:\Sur98\980221\DWG\Plots\
DWG NAME: NFISC

DATE: 5/15/2000
TIME: 11:30 a.m.



Curve Table			
No.	Radius	Delta	Length
C1	955.37'	01°14'55"	20.82'
C2	557.56'	15°51'00"	154.24'
C3	2867.82'	00°36'00"	30.03'
C4	1435.47'	01°12'01"	30.07'
C5	958.04'	01°47'59"	30.09'
C6	719.34'	01°12'56"	15.26'
C7	30050.01'	00°56'00"	489.48'
C8	60.00'	63°17'05"	66.28'
C9	1222.09'	31°53'47"	680.33'
C10	1434.10'	07°09'19"	179.09'

Bearing Table		
No.	Bearing	Distance
L1	S 76°59'47" W	30.74'
L2	N 00°30'07" W	15.37'
L3	S 76°59'47" W	51.25'
L4	N 00°30'13" W	28.00'
L5	N 89°29'47" E	183.18'
L6	N 00°42'53" W	10.00'
L7	N 87°10'47" E	238.51'

Subject: EXHIBIT "B"
FISC SOUTH

Job No. 980221-10
By RCS Date 5/12/00 Chkd. MP
SHEET 1 OF 1

Brian Kangas Foulk
Engineers • Surveyors • Planners
540 Price Avenue
Redwood City, CA 94063
650/482-6300
650/482-6399 (FAX)

PATH: J:\SUR98\980221\DWG\Plats\
DWG NAME: SFISC

DATE: 5/12/2000
TIME: 2:42 p.m.

Exhibit C

RECEIVED
FEB 17 20
CITY OF ALAMEDA

CITY OF ALAMEDA ORDINANCE NO. 2824
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING CHAPTER XIII (BUILDING AND HOUSING) BY ADDING A NEW SECTION 13-56 (EXCAVATION INTO THE MARSH CRUST/SUBTIDAL ZONE AT THE FORMER NAVAL AIR STATION ALAMEDA AND FLEET INDUSTRIAL SUPPLY CENTER, ALAMEDA ANNEX AND FACILITY) TO ARTICLE XVII (PITS, WELLS AND EXCAVATIONS)

WHEREAS, the marshlands and near shore areas once located adjacent to the island of Alameda were filled with dredge material between approximately 1900 and 1940; and

WHEREAS, the marsh crust, and the subtidal zone extending from it, is a horizon that is identifiable in the subsurface (the interface at the bottom of the fill material) which contains remnants of grasses and other intertidal and subtidal features; and

WHEREAS, the marsh crust/subtidal zone also contains, at least locally, elevated levels of petroleum-related substances, such as semi-volatile organic compounds, which substances may pose an unacceptable risk to human health and the environment if excavated in marsh crust/subtidal zone materials, brought to the ground surface and handled in an uncontrolled manner; and

CITY ATTORNEY

WHEREAS, proper handling, storage and disposal of materials excavated from the marsh crust/subtidal zone, pursuant to state and federal hazardous materials laws, will help eliminate unacceptable exposures and risks to human health and the environment; and

WHEREAS, the Draft Base-wide Focused Feasibility Study for the Former Subtidal Area and Marsh Crust and Ground Water (U.S. Navy, February 20, 1999) recommends implementation by the City of an institutional control, such as an excavation ordinance, as a remedial action related to the cleanup by the United States Navy of Naval Air Station Alameda and the Fleet Industrial Supply Center, Alameda Annex and Facility, which closed military installations are anticipated to be transferred to the City; and

WHEREAS, it can be seen with a certainty that adoption of a permitting program by the City that requires proper handling, storage and disposal, pursuant to existing state and federal hazardous materials laws, of materials excavated from the marsh crust/subtidal zone will not involve or require any physical activities other than optional testing of excavated materials and, therefore, is exempt from the California Environmental Quality Act pursuant to California Code of Regulations, title 14, section 15061(b)(3) because there is no possibility that the enactment of the ordinance may have a significant effect on the environment.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is hereby amended by adding a new Section 13-56 (Excavation Into the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda and Fleet Industrial Supply Center) to Article XVII (Pits, Wells and Excavations) of Chapter XIII (Building and Housing) thereof to read:

13-56 EXCAVATION INTO THE MARSH CRUST/SUBTIDAL ZONE AT THE FORMER NAVAL AIR STATION ALAMEDA AND FLEET INDUSTRIAL SUPPLY CENTER, ALAMEDA ANNEX AND FACILITY.

13-56.1 DEFINITIONS.

For purposes of this Section 13-56 the following definitions shall apply:

Bay shall mean San Francisco Bay, including the Oakland Estuary and the Oakland Inner Harbor.

DTSC shall mean the California Environmental Protection Agency, Department of Toxic Substances Control.

Earth material shall mean any rock, natural soil or fill or any combination thereof.

Excavation shall mean the mechanical removal of earth material.

Hazardous materials, as defined in California Health and Safety Code sections 25260(d) and 25501(k), shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant or potential hazard to human health and safety, or to the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste and any material which a handler or the administering agency has reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

Marsh crust shall mean the underground layer that is the remnant of the tidal marsh that existed along the shoreline of Alameda Island before filling to create additional dry land. In many places, this layer contains substances from former industrial discharges that were retained in the historic marsh before filling.

Subtidal zone shall mean the underground layer that is the pre-filling Bay floor extension of the historic marsh. Together, the marsh crust and the subtidal zone constitute a single, continuous, underground layer that extends Bayward of the original mean higher high tide line of Alameda Island, before filling, throughout the area that was filled.

Threshold depth shall mean the depth below which a permit is required by this Section 13-56. The threshold depth is conservatively identified with the elevation above which there is little likelihood that substances from the historic marsh or Bay floor would have mixed during filling, including a margin of safety above the elevation of the historic marsh surface or subtidal zone. In no event will the threshold depth be above mean higher high water.

13-56.2 Permit Required.

a. It shall be unlawful for any person, including utility companies and their employees and contractors, to excavate below a threshold depth above the marsh crust/subtidal zone within the area of the former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility, as depicted in Exhibit A, hereto, without first obtaining a permit in writing from the Chief Building Official.

b. All excavation below the threshold depth in the area subject to this Section 13-56 shall be performed solely in accordance with the permit as approved and issued by the City.

13-56.3 Depth of Excavation Subject to Permit Requirement.

The Chief Building Official shall establish a threshold depth, consistent with DTSC's remedial decision documents pertaining to the marsh crust/subtidal zone, below which a permit shall be required for excavation pursuant to this Section 13-56. The threshold depth may vary by location. The Chief Building Official shall publish a map depicting the parcels and threshold depths for which a permit is required under this Section 13-56. The Chief Building Official may update the map, consistent with DTSC's remedial decision documents pertaining to the marsh crust/subtidal zone, as necessary to incorporate any new information concerning the depth of the marsh crust/subtidal zone received by the City since the preparation of the initial map or last update.

13-56.4 Exception to Permit Requirement.

a. No permit shall be required under this Section 13-56 for pile driving or other penetration of the marsh crust/subtidal zone that involves neither (i) bringing materials from below the threshold depth to above the threshold depth; nor (ii) exposure of construction workers to soil excavated from below the threshold depth.

b. No permit shall be required under this Section 13-56 for excavation associated with emergency repair of public infrastructure facilities; provided, however, that soil excavated from below the threshold depth in the area of the marsh crust/subtidal zone, as depicted on Exhibit A, must be managed as though it were hazardous in accordance with Subsection 13-56.8b.

13-56.5 Permit Application.

Application for a permit shall be made in writing on forms available in or from the Building Services Office and shall be filed in the Building Services Office. Subsection 13-1.2 of Article I of Chapter XXIII regarding Appeals (Section 105.1), Appeal Fee (Section 105.2), Expiration (Section 106.4.4), Permit Fees (Section 107.2) and Plan Review Fees (Section 107.3) shall apply to all permits issued pursuant to this Section 13-56. The information required to be provided on the application shall be determined by the Chief Building Official and shall include at a minimum:

a. A description and map of the property that is to be excavated sufficient to locate the area of proposed excavation on Exhibit A.

b Detailed plans, prepared by a registered civil engineer licensed in the State of California, of the excavation work to be done, including a drawing with dimensions to scale of all proposed excavation activity.

c. A statement of the maximum depth of excavation.

d. All elevations in plans and application materials submitted to the City shall be referenced to City Datum and shall show depth below ground surface.

e. A cost estimate for purposes of determining the amount of the bond required to be obtained pursuant to Subsection 13-56.11.

13-56.6 Certifications and Acknowledgments.

a. The following certifications shall be required as part of the permit application:

1. The applicant shall sign a certification prepared by the Chief Building Official acknowledging receipt of notice that the property to be excavated may be in the area of the marsh crust/subtidal zone, and that hazardous materials may be encountered during excavation.

2. The applicant shall sign a certification prepared by the Chief Building Official acknowledging that federal and state hazardous materials laws and regulations will apply to storage, transportation and disposal of any materials excavated from the marsh crust/subtidal zone that are hazardous materials.

3. The applicant shall sign a certification prepared by the Chief Building Official acknowledging liability for disturbing and removing all materials from the marsh crust/subtidal zone in accordance with this Section 13-56 and the permit.

b. All building and excavation permits issued for construction or excavation within the area subject to this SubSection 13-56 shall contain the following written warning:

"Pursuant to Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code, excavation work in the area of the marsh crust/subtidal zone within the area of the former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility, as depicted in Exhibit A to Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code, may be subject to special materials handling requirements. The permittee acknowledges that he or she has been informed of the special materials handling requirements of Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code and that hazardous materials may be encountered during excavation."

13-56.7 Notification Prior to Start of Excavation.

a. After receipt of a permit and no less than two (2) business days (forty-eight (48) hours minimum) before commencement of any excavation activity in the area subject to this Section 13-56, the permittee shall notify the Chief Building Official of the planned start of excavation. Said notification shall include a schedule for any excavation work that will last for more than one day.

b. The permittee shall give adequate notice to Underground Service Alert prior to commencing any excavation activity subject to this Section 13-56.

13-56.8 Materials Handling.

The permittee shall elect to follow one or more of the courses of action set forth below before beginning any excavation activities in the area subject to this Section 13-56. Unless otherwise demonstrated by the permittee by means of reconnaissance investigation pursuant to Subsection 13-56.8a, or unless the permittee prepares site management plans pursuant to Subsection 13-56.8c, soil below the threshold depth in the area of the marsh crust/subtidal zone, as depicted on Exhibit A, must be managed as though it were hazardous pursuant to Subsection 13-56.8b. The permittee may elect to follow Subsection 13-56.8a, but must comply with Subsection 13-56.8b or 13-56.8c if testing demonstrates that the materials below the threshold depth are hazardous materials. Copies of all reconnaissance testing results and/or existing information used to satisfy the reconnaissance investigation requirements of Subsection 13-56.8a shall be reported to and filed with the City. All observations or encounters with the marsh crust/subtidal zone during excavation shall be reported to the City.

a. **Reconnaissance Investigation to Rule Out the Presence of Hazardous Materials Below the Threshold Depth.**

The permittee may elect to use reconnaissance borings, pursuant to a plan prepared by a qualified registered engineer or registered geologist, licensed in the State of California, to rule out, to the satisfaction of the Chief Building Official, the presence of hazardous materials below the threshold depth in the area to be excavated. As part or all of the reconnaissance plan, the permittee may make use of existing information, where appropriate, if the existing information is directly relevant to the location and depth to be excavated and contains observations or results of analyses that assist in concluding whether hazardous materials are present. The reconnaissance report shall include a description of all observations from below the threshold depth evidencing the presence or absence of the marsh crust/subtidal zone.

1. If hazardous materials are found below the threshold depth within the area to be excavated at any time (during reconnaissance or during excavation), the permittee shall comply with either Subsection 13-56.8b or Subsection 13-56.8c, at his or her election.

2. If hazardous materials are not found below the threshold depth within the area to be excavated, no additional materials controls, except as otherwise may be required under applicable federal, state or local law, are required under this Section 13-56.

b. Handling Materials Excavated From Below the Threshold Depth as Hazardous Materials.

If the permittee has not ruled out the presence of hazardous materials pursuant to Subsection 13-56.8a, or elects not to prepare a site management plan and materials testing program pursuant to Subsection 13-56.8c, the permittee shall presume that materials excavated from below the threshold depth must be disposed at an appropriately permitted disposal facility. In addition, no excavated materials from below the threshold depth may be stockpiled prior to disposal or returned to the excavation.

c. Preparation of Construction Site Management Plan for Handling Materials Excavated From Below the Threshold Depth.

1. In lieu of handling materials excavated from below the threshold depth pursuant to the restrictions in Subsection 13-56.8b, the permittee may elect to hire a qualified registered engineer or registered geologist, licensed in the State of California, to develop a site-specific construction site management plan, including a materials testing program, to the satisfaction of the Chief Building Official. The construction site management plan shall include, at a minimum, provisions governing control of precipitation run on and run off from stockpiled soils, soil segregation, securing of stockpiled soils, duration of stockpiling, and contingency plans for handling materials excavated from below the threshold depth that prove to be hazardous materials.

2. The permittee shall hire a qualified registered engineer or registered geologist, licensed in the State of California, to oversee compliance with the approved construction site management plan, and shall transmit to the Chief Building Official upon completion of the project written certification of compliance with the construction site management plan. The certification report shall include a description of all observations from below the threshold depth evidencing the presence or absence of the marsh crust/subtidal zone.

13-56.9 Health and Safety Plan.

The applicant shall cause to be prepared by a certified industrial hygienist, and keep on the construction site at all times, a health and safety plan to protect workers at the excavation site and the general public to the satisfaction of the Chief Building Official. The Chief Building Official may prepare and provide to applicants a model health and safety plan which, if used by the applicant, shall be modified by the applicant's certified industrial hygienist to suit the specific requirements of the applicant's project.

13-56.10 Excavation Site Best Management Practices.

All excavation and materials handling activities permitted under this Section 13-56 shall be conducted in accordance with applicable Alameda Countywide Clean Water Program Best Management Practices and City of Alameda Storm Water Management and Discharge Control Program Ordinance requirements.

13-56.11 Bonds.

Upon a finding by the Chief Building Official that a permit should issue for excavation pursuant to this Section 13-56, a surety or performance bond conditioned upon the faithful performance and completion of the permitted excavation activity shall be filed with the City. Such bond shall be executed in favor of the City and shall be maintained in such form and amounts prescribed by the Risk Manager sufficient to ensure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

13-56.12 Nonassumption of Liability.

In undertaking to require applicants for certain excavation permits to comply with the requirements of this Section 13-56, the City of Alameda is assuming an undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on itself or on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

13-56.13 Construction on City Property.

a. The Chief Building Official shall prepare standard work procedures that comply with all the requirements of this Section 13-56 for all City

construction or improvement activities involving excavation below the threshold depth in the area subject to this Section 13-56. All departments, boards, commissions, bureaus and agencies of the City of Alameda that conduct construction or improvements on land under their jurisdiction involving excavation below the threshold depth in the area subject to this Section 13-56 shall follow such standard work procedures.

b. The City shall include in all contracts involving excavation below the threshold depth in the area subject to this Section 13-56 a provision requiring City contractors to comply with all the requirements of this Section 13-56. All contracts entered into by departments, boards, commissions, bureaus and agencies of the City of Alameda that authorize construction or improvements on land under their jurisdiction involving excavation below the threshold depth in the area subject to this Section 13-56 also shall contain such standard contract provision.

13-56.14 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Section 13-56 or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section 13-56 or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Section 13-56 irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective.

13-56.15 Permit Fee.

No permits for excavation in the marsh crust/subtidal zone shall be issued unless a fee has been paid. The fee shall be set by City Council resolution.

13-56.16 Penalties.

a. Any person, including utility companies and their employees and contractors, violating any of the provisions of this Section 13-56 shall be deemed guilty of a misdemeanor, and each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Section 13-56 is committed, continued or permitted, and such violation may be prosecuted and punished as an infraction or misdemeanor pursuant to the provisions of Section 1-5.1 of the Alameda Municipal Code .

b. Any person, including utility companies and their employees and contractors, that commences any excavation without first obtaining the necessary permits therefor shall, if subsequently allowed to obtain a permit, pay an amount, in

addition to the ordinary permit fee required, quadruple the permit fee otherwise required.

13-56.17 Retention and Availability of Permit Files

The City shall maintain files pertaining to all permits issued under this Section 13-56, and shall make such files available to DTSC for inspection upon request during normal business hours.

13-56.18 Amendment of Section 13-56

This Section 13-56 shall not be repealed or amended without thirty (30) days prior written notice to the DTSC Deputy Director for Site Mitigation.

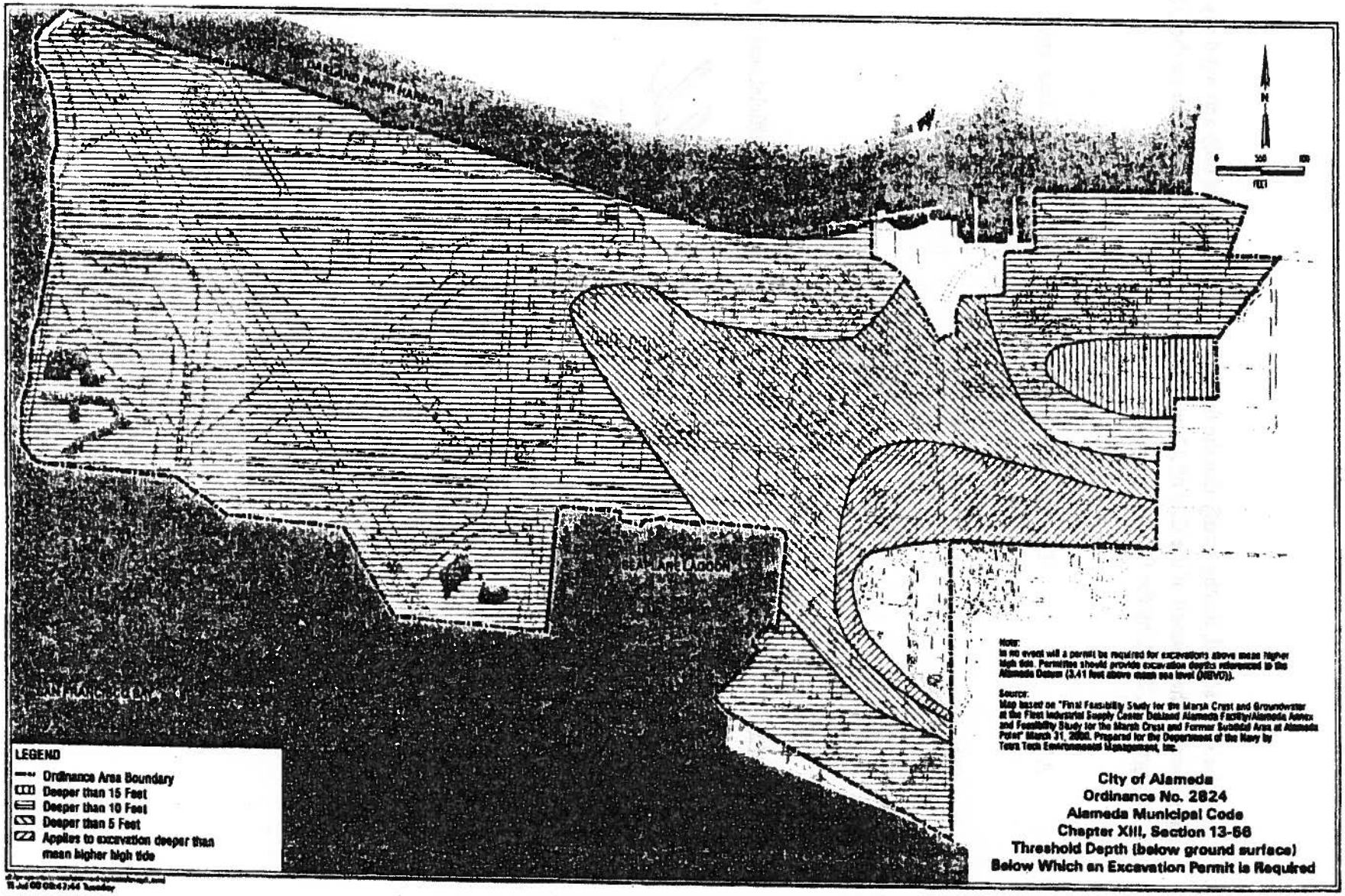
Section 2. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

City Clerk

* * * * * *


LEGEND
Ordinance Area Boundary
Deeper than 15 Feet
Deeper than 10 Feet
Deeper than 5 Feet
Applies to excavation deeper than mean higher high tide
N
FEET
Note:
In no event will a permit be required for excavations above mean higher high tide. Permittee should provide excavation depths referenced to the Alameda Datum (3.41 feet above mean sea level (MSVD)).
Source:
Map based on "Final Feasibility Study for the Marsh Crust and Groundwater at the Fleet Industrial Supply Center Oakland Alameda Facility/Alameda Annex and Feasibility Study for the Marsh Crust and Former Subtidal Area at Alameda Point" March 31, 2000. Prepared for the Department of the Navy by Tetra Tech Environmental Management, Inc.
City of Alameda
Ordinance No. 2824
Alameda Municipal Code
Chapter XIII, Section 13-66
Threshold Depth (below ground surface)
Below Which an Excavation Permit is Required

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 15th day of February, 2000, by the following vote to wit:

AYES:	Councilmembers Daysog, DeWitt, Johnson, Kerr and Mayor Appezzato - 5.
NOES:	None.
ABSENT:	None.
ABSTENTIONS:	None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 16th day of February, 2000.

Diane B Felsch

Diane Felsch, City Clerk
City of Alameda

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 15th day of February, 2000, by the following vote to wit:

AYES:	Councilmembers Daysog, DeWitt, Johnson, Kerr and Mayor Appezzato - 5.
NOES:	None.
ABSENT:	None.
ABSTENTIONS:	None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 16th day of February, 2000.

Diane B Felsch

Diane Felsch, City Clerk
City of Alameda

March Crust
Ordinance

file

NOTICE OF EXEMPTION

To: __ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

or _X_ County Clerk
County of Alameda
1225 Fallon Street
Oakland, CA 94612

From: City of Alameda
Planning Department
City Hall, Room 120
2263 Santa Clara Avenue
Alameda, CA 94501

RECEIVED
MAR 08 2000
CITY OF ALAMEDA

Project Title: Marsh Crust Excavation Ordinance No. 2824

Project Location - City: Alameda **Project Location - County:** Alameda

Description of Project: City Council adoption of Ordinance No. 2824 on February 16, 2000, providing environmer protection during excavation of potentially hazardous soils in the shoreline Marsh Crust area of Alameda al Oakland/Alameda Estuary. Project does not include individual construction activities within the Marsh Crust; proje will receive individual review under CEQA Guidelines.

Name of Public Agency Approving Project: Alameda City Council

Name of Person or Agency Carrying Out Project: Alameda City Public Works Department

Exempt Status: (check one)
__Ministerial (Sec. 15268)
__Declared Emergency (Sec. 15269(a))
__Emergency Project (Sec. 15269(b)(c))
__Categorical Exemption. State type & section number.
XX Statutory Exemptions. State code number: S. 15308 ; also S. 15061(b)(3)

Reasons why project is exempt: The Ordinance is an "action by a regulatory agency for protection of the environme a Class 8 exemption under Section 15308 of CEQA Guidelines, "to assure the maintenance, restoration, enhancemen protection of the environment." The Ordinance establishes standards for control of subsurface hydrocarbon and ot deposits during future construction processes. Individual construction projects are to be evaluated by subsequent CE review, under standards of the Ordinance. In addition, Section 15061(b)(3) of the CEQA Guidelines provide, whe can be seen with certainty that a program will not involve activities which may have a significant effect on environment, the project is exempt. Adoption of an Ordinance causes no physical activities and enhances regulatic

Lead Agency Contact Person: David Valeska, Planner III
Area Code/Telephone: (510) 748-4554

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project: __ Yes __ No

Signature: [signature]

Title: Development Review Manager

Date Received for Filing: _____
Date Posted: _____

SUPPLEMENT TO NOTICE OF EXEMPTION, MARSH CRUST EXCAVATION ORDINANCE

BACKGROUND

The City of Alameda borders the Oakland/Alameda Estuary, a waterway connecting to San Francisco Bay. The Estuary shoreline was at a lower elevation in the early 20th Century, when shipping and manufacturing left hydrocarbon deposits on these marsh areas. Later in the 20th Century, landfill raised the elevation of these shoreline areas above the tidal action line, covering the hydrocarbon-impacted tidal marshes. This process resulted in a buried layer of hydrocarbon-saturated soils known as Marsh Crust. Exposure of the Marsh Crust may result in hazardous conditions.

In recent years, construction along the north Alameda shoreline has involved excavation and installation of pilings to create foundations for new structures. Excavation below the surface of such properties may result in exposure of the Marsh Crust to the public.

Mitigated Negative Declarations adopted by the City in recent years for this area have included mitigations and conditions addressing excavation and pile driving in the Marsh Crust. The City has identified a need for establishment of standards for Marsh Crust excavation and pile driving, which resulted in adoption of the attached Ordinance.

ORDINANCE

The Ordinance provides for standards and procedures to be followed regarding excavation and pile driving in the Marsh Crust area. These regulations will minimize the risk of exposure of the public to subsurface hydrocarbon or other chemical deposits which have entered the Marsh Crust due to past chemical leakages. The regulations will protect Estuary wildlife by minimizing the risk of chemical spills into Estuary waters.

The Ordinance does not approve any individual construction projects. Each excavation or pile driving activity in the Marsh Crust will separately be evaluated under the California Environmental Quality Act as either requiring a Mitigated Negative Declaration, Categorical Exemption or other procedure.

CONCLUSION

The Ordinance is Categorically Exempt under Section 15308 of the CEQA Guidelines because it establishes regulatory standards for protection of the environment without approving any individual construction projects.

March 1, 2000 dv

Appendix E

NOTICE OF EXEMPTION

To: ☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: City of Alameda
Public Works Department
2263 Santa Clara Avenue
Alameda, CA 94501

☒ County Clerk
County of Alameda
1225 Fallon Street
Oakland, CA 94612

Project Title: Excavation Ordinance

Project Location - Specific: Former Alameda Naval Air Station and Fleet Industrial Supply Center, Alameda Annex and Facility

Project Location - City: Alameda

Project Location - County: Alameda

Project Description: Adoption of an excavation ordinance to regulate excavation into the Marsh Crust at Fleet Industrial Supply Center and Alameda Naval Air Station, Alameda. The excavation ordinance will require testing and proper handling of soils which may be hazardous, protecting health and human safety.

Name of Public Agency Approving Project: City of Alameda

Name of Person or Agency Carrying Out Project:

Exempt Status: (check one)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section Number: 15061(b)(3)
- ☐ Statutory Exemptions. State code number:

Reasons why project is exempt: The project involves adoption of an excavation ordinance. There is no possibility that the adoption of this ordinance will have a significant impact on the environment. (See attachment)

Lead Agency Contact Person: Dina Tasini **Area Code/Telephone/Extension:** 510/749-5922

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: [signature] Date: 2/18/00 Title: Environmental Mgr.

☐ Signed by Lead Agency

☐ Signed by Applicant

Date received for filing at OPR:

CITY OF ALAMEDA ORDINANCE NO. 2824
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING CHAPTER XIII (BUILDING AND HOUSING) BY ADDING A NEW SECTION 13-56 (EXCAVATION INTO THE MARSH CRUST/SUBTIDAL ZONE AT THE FORMER NAVAL AIR STATION ALAMEDA AND FLEET INDUSTRIAL SUPPLY CENTER, ALAMEDA ANNEX AND FACILITY) TO ARTICLE XVII (PITS, WELLS AND EXCAVATIONS)

WHEREAS, the marshlands and near shore areas once located adjacent to the island of Alameda were filled with dredge material between approximately 1900 and 1940; and

WHEREAS, the marsh crust, and the subtidal zone extending from it, is a horizon that is identifiable in the subsurface (the interface at the bottom of the fill material) which contains remnants of grasses and other intertidal and subtidal features; and

WHEREAS, the marsh crust/subtidal zone also contains, at least locally, elevated levels of petroleum-related substances, such as semi-volatile organic compounds, which substances may pose an unacceptable risk to human health and the environment if excavated in marsh crust/subtidal zone materials, brought to the ground surface and handled in an uncontrolled manner; and

WHEREAS, proper handling, storage and disposal of materials excavated from the marsh crust/subtidal zone, pursuant to state and federal hazardous materials laws, will help eliminate unacceptable exposures and risks to human health and the environment; and

WHEREAS, the Draft Base-wide Focused Feasibility Study for the Former Subtidal Area and Marsh Crust and Ground Water (U.S. Navy, February 20, 1999) recommends implementation by the City of an institutional control, such as an excavation ordinance, as a remedial action related to the cleanup by the United States Navy of Naval Air Station Alameda and the Fleet Industrial Supply Center, Alameda Annex and Facility, which closed military installations are anticipated to be transferred to the City; and

WHEREAS, it can be seen with a certainty that adoption of a permitting program by the City that requires proper handling, storage and disposal, pursuant to existing state and federal hazardous materials laws, of materials excavated from the marsh crust/subtidal zone will not involve or require any physical activities other than optional testing of excavated materials and, therefore, is exempt from the California Environmental Quality Act pursuant to California Code of Regulations, title 14, section 15061(b)(3) because there is no possibility that the enactment of the ordinance may have a significant effect on the environment.

CITY ATTORNEY

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is hereby amended by adding a new Section 13-56 (Excavation Into the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda and Fleet Industrial Supply Center) to Article XVII (Pits, Wells and Excavations) of Chapter XIII (Building and Housing) thereof to read:

13-56 EXCAVATION INTO THE MARSH CRUST/SUBTIDAL ZONE AT THE FORMER NAVAL AIR STATION ALAMEDA AND FLEET INDUSTRIAL SUPPLY CENTER, ALAMEDA ANNEX AND FACILITY.

13-56.1 DEFINITIONS.

For purposes of this Section 13-56 the following definitions shall apply:

Bay shall mean San Francisco Bay, including the Oakland Estuary and the Oakland Inner Harbor.

DTSC shall mean the California Environmental Protection Agency, Department of Toxic Substances Control.

Earth material shall mean any rock, natural soil or fill or any combination thereof.

Excavation shall mean the mechanical removal of earth material.

Hazardous materials, as defined in California Health and Safety Code sections 25260(d) and 25501(k), shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant or potential hazard to human health and safety, or to the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste and any material which a handler or the administering agency has reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

Marsh crust shall mean the underground layer that is the remnant of the tidal marsh that existed along the shoreline of Alameda Island before filling to create additional dry land. In many places, this layer contains substances from former industrial discharges that were retained in the historic marsh before filling.

Subtidal zone shall mean the underground layer that is the pre-filling Bay floor extension of the historic marsh. Together, the marsh crust and the subtidal zone constitute a single, continuous, underground layer that extends Bayward of the original mean higher high tide line of Alameda Island, before filling, throughout the area that was filled.

Threshold depth shall mean the depth below which a permit is required by this Section 13-56. The threshold depth is conservatively identified with the elevation above which there is little likelihood that substances from the historic marsh or Bay floor would have mixed during filling, including a margin of safety above the elevation of the historic marsh surface or subtidal zone. In no event will the threshold depth be above mean higher high water.

13-56.2 Permit Required.

a. It shall be unlawful for any person, including utility companies and their employees and contractors, to excavate below a threshold depth above the marsh crust/subtidal zone within the area of the former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility, as depicted in Exhibit A, hereto, without first obtaining a permit in writing from the Chief Building Official.

b. All excavation below the threshold depth in the area subject to this Section 13-56 shall be performed solely in accordance with the permit as approved and issued by the City.

13-56.3 Depth of Excavation Subject to Permit Requirement.

The Chief Building Official shall establish a threshold depth, consistent with DTSC's remedial decision documents pertaining to the marsh crust/subtidal zone, below which a permit shall be required for excavation pursuant to this Section 13-56. The threshold depth may vary by location. The Chief Building Official shall publish a map depicting the parcels and threshold depths for which a permit is required under this Section 13-56. The Chief Building Official may update the map, consistent with DTSC's remedial decision documents pertaining to the marsh crust/subtidal zone, as necessary to incorporate any new information concerning the depth of the marsh crust/subtidal zone received by the City since the preparation of the initial map or last update.

13-56.4 Exception to Permit Requirement.

a. No permit shall be required under this Section 13-56 for pile driving or other penetration of the marsh crust/subtidal zone that involves neither (i) bringing materials from below the threshold depth to above the threshold depth; nor (ii) exposure of construction workers to soil excavated from below the threshold depth.

b. No permit shall be required under this Section 13-56 for excavation associated with emergency repair of public infrastructure facilities; provided, however, that soil excavated from below the threshold depth in the area of the marsh crust/subtidal zone, as depicted on Exhibit A, must be managed as though it were hazardous in accordance with Subsection 13-56.8b.

13-56.5 Permit Application.

Application for a permit shall be made in writing on forms available in or from the Building Services Office and shall be filed in the Building Services Office. Subsection 13-1.2 of Article I of Chapter XXIII regarding Appeals (Section 105.1), Appeal Fee (Section 105.2), Expiration (Section 106.4.4), Permit Fees (Section 107.2) and Plan Review Fees (Section 107.3) shall apply to all permits issued pursuant to this Section 13-56. The information required to be provided on the application shall be determined by the Chief Building Official and shall include at a minimum:

a. A description and map of the property that is to be excavated sufficient to locate the area of proposed excavation on Exhibit A.

b Detailed plans, prepared by a registered civil engineer licensed in the State of California, of the excavation work to be done, including a drawing with dimensions to scale of all proposed excavation activity.

c. A statement of the maximum depth of excavation.

d. All elevations in plans and application materials submitted to the City shall be referenced to City Datum and shall show depth below ground surface.

e. A cost estimate for purposes of determining the amount of the bond required to be obtained pursuant to Subsection 13-56.11.

13-56.6 Certifications and Acknowledgments.

a. The following certifications shall be required as part of the permit application:

1. The applicant shall sign a certification prepared by the Chief Building Official acknowledging receipt of notice that the property to be excavated may be in the area of the marsh crust/subtidal zone, and that hazardous materials may be encountered during excavation.

2. The applicant shall sign a certification prepared by the Chief Building Official acknowledging that federal and state hazardous materials laws and regulations will apply to storage, transportation and disposal of any materials excavated from the marsh crust/subtidal zone that are hazardous materials.

3. The applicant shall sign a certification prepared by the Chief Building Official acknowledging liability for disturbing and removing all materials from the marsh crust/subtidal zone in accordance with this Section 13-56 and the permit.

b. All building and excavation permits issued for construction or excavation within the area subject to this SubSection 13-56 shall contain the following written warning:

"Pursuant to Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code, excavation work in the area of the marsh crust/subtidal zone within the area of the former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility, as depicted in Exhibit A to Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code, may be subject to special materials handling requirements. The permittee acknowledges that he or she has been informed of the special materials handling requirements of Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code and that hazardous materials may be encountered during excavation."

13-56.7 Notification Prior to Start of Excavation.

a. After receipt of a permit and no less than two (2) business days (forty-eight (48) hours minimum) before commencement of any excavation activity in the area subject to this Section 13-56, the permittee shall notify the Chief Building Official of the planned start of excavation. Said notification shall include a schedule for any excavation work that will last for more than one day.

b. The permittee shall give adequate notice to Underground Service Alert prior to commencing any excavation activity subject to this Section 13-56.

13-56.8 Materials Handling.

The permittee shall elect to follow one or more of the courses of action set forth below before beginning any excavation activities in the area subject to this Section 13-56. Unless otherwise demonstrated by the permittee by means of reconnaissance investigation pursuant to Subsection 13-56.8a, or unless the permittee prepares site management plans pursuant to Subsection 13-56.8c, soil below the threshold depth in the area of the marsh crust/subtidal zone, as depicted on Exhibit A, must be managed as though it were hazardous pursuant to Subsection 13-56.8b. The permittee may elect to follow Subsection 13-56.8a, but must comply with Subsection 13-56.8b or 13-56.8c if testing demonstrates that the materials below the threshold depth are hazardous materials. Copies of all reconnaissance testing results and/or existing information used to satisfy the reconnaissance investigation requirements of Subsection 13-56.8a shall be reported to and filed with the City. All observations or encounters with the marsh crust/subtidal zone during excavation shall be reported to the City.

a. **Reconnaissance Investigation to Rule Out the Presence of Hazardous Materials Below the Threshold Depth.**

The permittee may elect to use reconnaissance borings, pursuant to a plan prepared by a qualified registered engineer or registered geologist, licensed in the State of California, to rule out, to the satisfaction of the Chief Building Official, the presence of hazardous materials below the threshold depth in the area to be excavated. As part or all of the reconnaissance plan, the permittee may make use of existing information, where appropriate, if the existing information is directly relevant to the location and depth to be excavated and contains observations or results of analyses that assist in concluding whether hazardous materials are present. The reconnaissance report shall include a description of all observations from below the threshold depth evidencing the presence or absence of the marsh crust/subtidal zone.

1. If hazardous materials are found below the threshold depth within the area to be excavated at any time (during reconnaissance or during excavation), the permittee shall comply with either Subsection 13-56.8b or Subsection 13-56.8c, at his or her election.

2. If hazardous materials are not found below the threshold depth within the area to be excavated, no additional materials controls, except as otherwise may be required under applicable federal, state or local law, are required under this Section 13-56.

b. Handling Materials Excavated From Below the Threshold Depth as Hazardous Materials.

If the permittee has not ruled out the presence of hazardous materials pursuant to Subsection 13-56.8a, or elects not to prepare a site management plan and materials testing program pursuant to Subsection 13-56.8c, the permittee shall presume that materials excavated from below the threshold depth must be disposed at an appropriately permitted disposal facility. In addition, no excavated materials from below the threshold depth may be stockpiled prior to disposal or returned to the excavation.

c. Preparation of Construction Site Management Plan for Handling Materials Excavated From Below the Threshold Depth.

1. In lieu of handling materials excavated from below the threshold depth pursuant to the restrictions in Subsection 13-56.8b, the permittee may elect to hire a qualified registered engineer or registered geologist, licensed in the State of California, to develop a site-specific construction site management plan, including a materials testing program, to the satisfaction of the Chief Building Official. The construction site management plan shall include, at a minimum, provisions governing control of precipitation run on and run off from stockpiled soils, soil segregation, securing of stockpiled soils, duration of stockpiling, and contingency plans for handling materials excavated from below the threshold depth that prove to be hazardous materials.

2. The permittee shall hire a qualified registered engineer or registered geologist, licensed in the State of California, to oversee compliance with the approved construction site management plan, and shall transmit to the Chief Building Official upon completion of the project written certification of compliance with the construction site management plan. The certification report shall include a description of all observations from below the threshold depth evidencing the presence or absence of the marsh crust/subtidal zone.

13-56.9 Health and Safety Plan.

The applicant shall cause to be prepared by a certified industrial hygienist, and keep on the construction site at all times, a health and safety plan to protect workers at the excavation site and the general public to the satisfaction of the Chief Building Official. The Chief Building Official may prepare and provide to applicants a model health and safety plan which, if used by the applicant, shall be modified by the applicant's certified industrial hygienist to suit the specific requirements of the applicant's project.

13-56.10 Excavation Site Best Management Practices.

All excavation and materials handling activities permitted under this Section 13-56 shall be conducted in accordance with applicable Alameda Countywide Clean Water Program Best Management Practices and City of Alameda Storm Water Management and Discharge Control Program Ordinance requirements.

13-56.11 Bonds.

Upon a finding by the Chief Building Official that a permit should issue for excavation pursuant to this Section 13-56, a surety or performance bond conditioned upon the faithful performance and completion of the permitted excavation activity shall be filed with the City. Such bond shall be executed in favor of the City and shall be maintained in such form and amounts prescribed by the Risk Manager sufficient to ensure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

13-56.12 Nonassumption of Liability.

In undertaking to require applicants for certain excavation permits to comply with the requirements of this Section 13-56, the City of Alameda is assuming an undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on itself or on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

13-56.13 Construction on City Property.

a. The Chief Building Official shall prepare standard work procedures that comply with all the requirements of this Section 13-56 for all City

construction or improvement activities involving excavation below the threshold depth in the area subject to this Section 13-56. All departments, boards, commissions, bureaus and agencies of the City of Alameda that conduct construction or improvements on land under their jurisdiction involving excavation below the threshold depth in the area subject to this Section 13-56 shall follow such standard work procedures.

b. The City shall include in all contracts involving excavation below the threshold depth in the area subject to this Section 13-56 a provision requiring City contractors to comply with all the requirements of this Section 13-56. All contracts entered into by departments, boards, commissions, bureaus and agencies of the City of Alameda that authorize construction or improvements on land under their jurisdiction involving excavation below the threshold depth in the area subject to this Section 13-56 also shall contain such standard contract provision.

13-56.14 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Section 13-56 or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section 13-56 or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Section 13-56 irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective.

13-56.15 Permit Fee.

No permits for excavation in the marsh crust/subtidal zone shall be issued unless a fee has been paid. The fee shall be set by City Council resolution.

13-56.16 Penalties.

a. Any person, including utility companies and their employees and contractors, violating any of the provisions of this Section 13-56 shall be deemed guilty of a misdemeanor, and each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Section 13-56 is committed, continued or permitted, and such violation may be prosecuted and punished as an infraction or misdemeanor pursuant to the provisions of Section 1-5.1 of the Alameda Municipal Code .

b. Any person, including utility companies and their employees and contractors, that commences any excavation without first obtaining the necessary permits therefor shall, if subsequently allowed to obtain a permit, pay an amount, in

addition to the ordinary permit fee required, quadruple the permit fee otherwise required.

13-56.17 Retention and Availability of Permit Files

The City shall maintain files pertaining to all permits issued under this Section 13-56, and shall make such files available to DTSC for inspection upon request during normal business hours.

13-56.18 Amendment of Section 13-56

This Section 13-56 shall not be repealed or amended without thirty (30) days prior written notice to the DTSC Deputy Director for Site Mitigation.

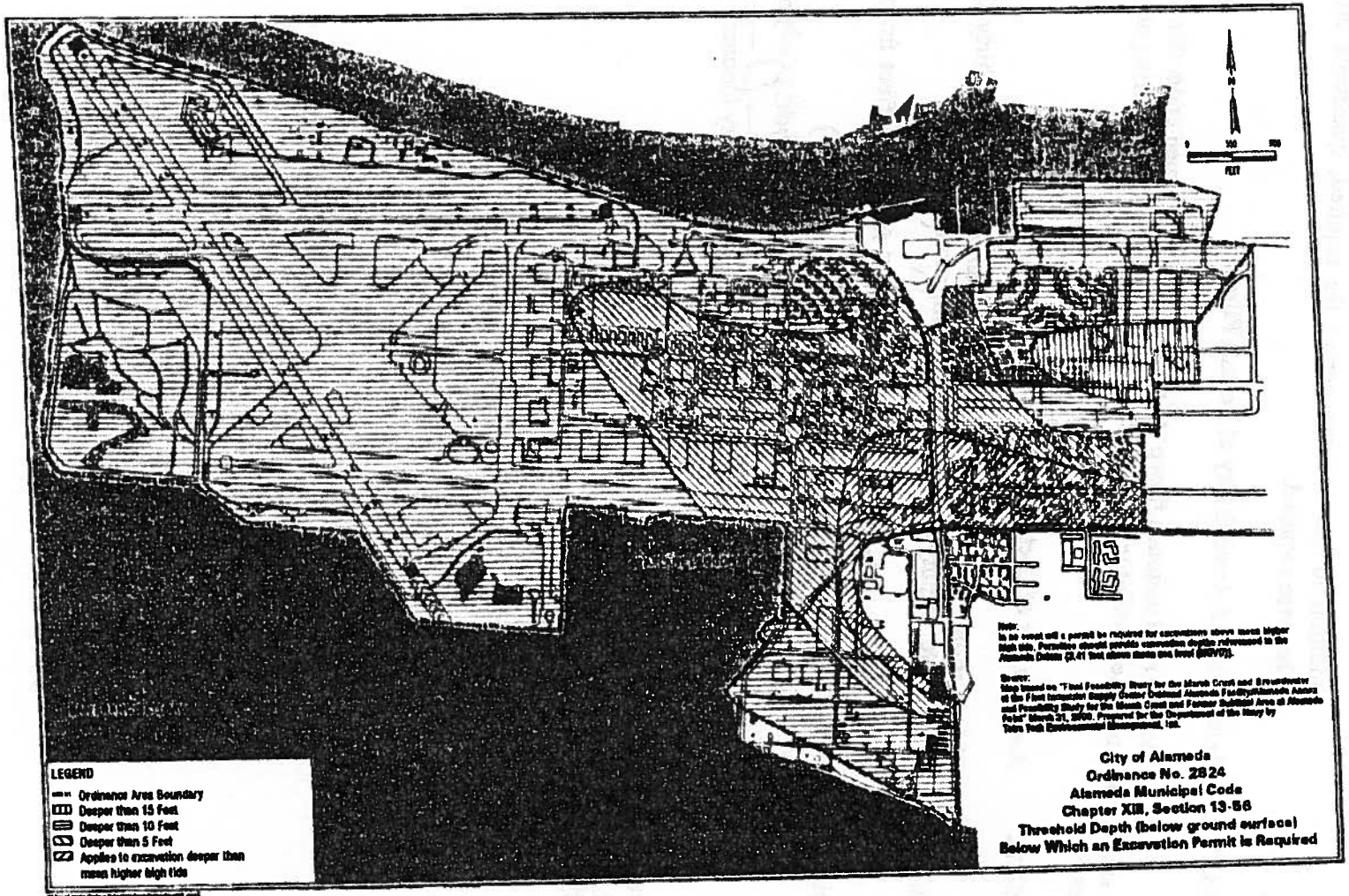
Section 2. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

City Clerk

* * * * * *



LIZ DODGE - rmap1_L.pdf

ATTACHMENT H

COPIES OF

BAYPORT DEVELOPMENT GRANT DEEDS

WITH

ENVIRONMENTAL DEED RESTRICTIONS

35 **RECORDING REQUESTED BY**
First American Title Company

AND WHEN RECORDED MAIL TO:

6 Bainbridge Square
Alameda, CA 94501

2004397265 09/01/2004 08:30 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 22.00
COUNTY TAX: 853.60
CITY TAX: 4190.40

6 PGS

Space Above This Line for Recorder's Use Only

A.P.N.: 074-0905-007

File No.: **0730-738704-168 (RM)**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX $853.60 ; CITY TRANSFER TAX $4,190.40
SURVEY MONUMENT FEE $

[x] computed on the consideration or full value of property conveyed, OR
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[ ] unincorporated area; [x] City of Alameda, and

CORPORATION GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Bayport Alameda Associates, LLC, a Delaware Limited Liability Company**

organized under the laws of the State of **Delaware**

hereby GRANTS to

the following described property in the City of **Alameda**, County of **Alameda**, State of **California**;

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO the Declaration of Restrictions recorded June 26, 2003 as Instrument No. 2003-372956, Official Records of Alameda County and any modifications and/or amendments thereto and is hereby incorporated by reference into the body of this instrument the same as though fully set forth herein.

Bayport Alameda Associates, LLC,
a Delaware Limited Liability Company
By: Warmington Alameda Associates, L.P.
a California Limited Partnership; Homebuilding Manager
By: Warmington Homes California,
a California Corporation, Partner

Date: 8/25/04

By: Michael W. McClellan
Michael W. McClellan, President

Mail Tax Statements To: **SAME AS ABOVE**

A.P.N.: 074-0905-007

Grant Deed - continued

File No.: **0730-738704cnh (RM)**
Date: **08/19/2004**

STATE OF California)SS
COUNTY OF Contra Costa)

On August 25, 2004, before me, Robin L. Neizman personally appeared Michael W. McClellan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

Signature Robin L. Neizman

My Commission Expires: 04/12/07

ROBIN L. NEIZMAN
Comm. # 1408068
NOTARY PUBLIC - CALIFORNIA
Contra Costa County
My Comm. Expires April 12, 2007

Notary Name: Robin L. Neizman Notary Phone: _____
Notary Registration Number: _____ County of Principal Place of Business: _____

ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY: Robin L. Neiman

COMMISSION NUMBER: 1406066

NOTARY PUBLIC STATE: CA

NOTARY PUBLIC COUNTY: Contra Costa

DATE COMMISSION EXPIRES: Apr. 12, 2007

SIGNATURE OF DECLARANT:

PRINT NAME OF DECLARANT: **Ashish Kumar**

CITY & STATE OF EXECUTION: **Oakland, California**

DATE SIGNED: 8/30/07

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

"GRANTEE", upon behalf of itself, it successors and assigns, by acceptance of this Grant Deed, agrees to be bound by each and every provision of this Grant Deed, the Master Declaration for Title 7 and Dispute Resolution recorded against the Property, including all exhibits thereto, and the Individual Declaration and Notices for Title 7 and Dispute Resolution recorded concurrently with this Grant Deed and made a part hereof with the same force and effect as though it had been set forth herein.

STATE OF CA)SS
COUNTY OF Contra Costa)

On 8.19.04, before me, John T. Cash Notary Public
personally appeared
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/~~they~~ executed the same in his/her/~~their~~ authorized capacity(ies), and that by his/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

Signature

Notary Name: John T. Cash Notary Phone: 925 356 7000
Notary Registration Number: County of Principal Place of Business:

JOHN T. CASH
Commission # 1348681
Notary Public - California
Napa County
My Comm. Expires Apr 28, 2006

ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY: John T. Cash

COMMISSION NUMBER: 1348661

NOTARY PUBLIC STATE: CA

NOTARY PUBLIC COUNTY: Napa

DATE COMMISSION EXPIRES: Apr. 25, 2006

SIGNATURE OF DECLARANT:

PRINT NAME OF DECLARANT: Ashish Kumar

CITY & STATE OF EXECUTION: Oakland, California

DATE SIGNED: 08/30/04

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

LEGAL DESCRIPTION

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

Lot 168, Tract 7387, filed June 24, 2003, Map Book 271, Pages 1-34, Alameda County Records

APN: 074-0905-007-01 (Portion)
074-0905-008-02 (Portion)

This is to certify that this is a
true copy of the document
on file in this office

ATTEST MAR - 8 2006

COUNTY RECORDER
PLACER COUNTY, CALIFORNIA

2004565279 12/23/2004 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL

RECORDING FEE:	16.00
COUNTY TAX:	1004.30
CITY TAX:	4930.20

4 PGS

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:

361 Bryant Avenue
Alameda, CA 94501

Space Above This Line for Recorder's Use Only

A.P.N.: 074-1354-070

File No.: **0730-738704-103(RM)**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX $ 1004.30 CITY TRANSFER TAX $4930.20; SURVEY MONUMENT FEE $

[x] computed on the consideration or full value of property conveyed, OR
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[ ] unincorporated area; [x] City of Alameda, and

CORPORATION GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Bayport Alameda Associates, LLC, a Delaware Limited Liability Company**

organized under the laws of the State of **Delaware**

hereby GRANTS to

the following described property in the City of **Alameda**, County of **Alameda**, State of **California**;

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO the Declaration of Restrictions recorded June 26, 2003 as Instrument No. 2003-372956, Official Records of Alameda County and any modifications and/or amendments thereto and is hereby incorporated by reference into the body of this instrument the same as though fully set forth herein.

Bayport Alameda Associates, LLC,
a Delaware Limited Liability Company
By: Warmington Alameda Associates, L.P.
a California Limited Partnership; Homebuilding Manager
By: Warmington Homes California,
a California Corporation, Partner

Date: November 29, 2004

By: _____
Michael W. McClellan, President,
Northern California Division

Mail Tax Statements To: **SAME AS ABOVE**

STATE OF California)SS
COUNTY OF Contra Costa)

On November 29, 2004, before me, Robin L. Neizman personally appeared Michael W. McClellan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

Signature

My Commission Expires: 4/12/07

ROBIN L. NEIZMAN
Comm. # 1408068
NOTARY PUBLIC - CALIFORNIA
Contra Costa County
My Comm. Expires April 12, 2007

Notary Name: Notary Phone:
Notary Registration Number: County of Principal Place of Business:

ROBIN L. NEIZMAN
Comm. # 1408068
NOTARY PUBLIC - CALIFORNIA
Contra Costa County
My Comm. Expires April 12, 2007

Robin L. Neizman
Comm#: 1408068
State: CA
County Contra Costa
My Comm. Exp. Apr. 12, 2007

"GRANTEE", upon behalf of itself, it successors and assigns, by acceptance of this Grant Deed, agrees to be bound by each and every provision of this Grant Deed, the Master Declaration for Title 7 and Dispute Resolution recorded against the Property, including all exhibits thereto, and the Individual Declaration and Notices for Title 7 and Dispute Resolution recorded concurrently with this Grant Deed and made a part hereof with the same force and effect as though it had been set forth herein.

STATE OF CA)SS
COUNTY OF Contra Costa)

On 12.16.04, before me, Rachel Hobbs Notary Public,
personally appeared _
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/~~they~~ executed the same in his/her/~~their~~ authorized capacity(ies), and that by his/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

Signature Rachel Hobbs

Notary Name: Rachel Hobbs Notary Phone: 925 356 7000
Notary Registration Number: 1397093 County of Principal Place of Business: CONTRA COSTA

RACHEL HOBBS
Commission # 1397093
Notary Public - California
Napa County
My Comm. Expires Feb 26, 2007

LEGAL DESCRIPTION

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

Parcel One:

Lot 103, Tract 7387, filed June 24, 2003, Map Book 271, Pages 1-34, Alameda County Records

Parcel Two:

Non-exclusive easements for the ingress, egress, use and enjoyment of the Common Area as shown on the map "Tract 7387-Bayport", filed June 24, 2003, Map Book 271, Pages 1 through 34, inclusive, Alameda County Records and defined in the Declaration of Covenants, Conditions and Restrictions of Bayport recorded June 26, 2003 as Series No. 2003-372956, Alameda County Records.

APN: 074-1354-070

This is to certify that this is a true copy of the document on file in this office.

ATTEST: MAR - 3 2006

COUNTY RECORDER
ALAMEDA COUNTY, CALIFORNIA

27

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:

411 Hollister Avenue
Alameda, CA 94501

2004429378 09/22/2004 08:30 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 19.00
COUNTY TAX: 787.60
CITY TAX: 3938.00
5 PGS

Space Above This Line for Recorder's Use Only

A.P.N.: 074-0905-007-01 File No.: **0730-738704-159 (RM)**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX $787.60 ; CITY TRANSFER TAX $3938.00 ;
SURVEY MONUMENT FEE $

[x] computed on the consideration or full value of property conveyed, OR
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[ ] unincorporated area; [x] City of Alameda, and

CORPORATION GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Bayport Alameda Associates, LLC, a Delaware Limited Liability Company**

organized under the laws of the State of **Delaware**

hereby GRANTS to

the following described property in the City of **Alameda**, County of **Alameda**, State of **California;**

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO the Declaration of Restrictions recorded June 26, 2003 as Instrument No. 2003-372956, Official Records of Alameda County and any modifications and/or amendments thereto and is hereby incorporated by reference into the body of this instrument the same as though fully set forth herein.

Bayport Alameda Associates, LLC,
a Delaware Limited Liability Company
By: Warmington Alameda Associates, L.P.
a California Limited Partnership; Homebuilding Manager
By: Warmington Homes California,
a California Corporation, Partner

Date: 08/25/04

By: Michael W. McClellan
Michael W. McClellan, President

Mail Tax Statements To: **SAME AS ABOVE**

STATE OF California)SS
COUNTY OF Contra Costa)

On August 25, 2004, before me, Robin L. Neizman personally appeared Michael W. McClellan, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(~~s~~) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

Signature _____

My Commission Expires: 4/12/07

ROBIN L. NEIZMAN
Comm. # 1408068
NOTARY PUBLIC - CALIFORNIA
Contra Costa County
My Comm. Expires April 12, 2007

Notary Name:_____ Notary Phone:_____
Notary Registration Number:_____ County of Principal Place of Business:_____

ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

NAME OF NOTARY: Robin L. Neizman

COMMISSION NUMBER: 1409066

NOTARY PUBLIC STATE: CA

NOTARY PUBLIC COUNTY: Contra Costa

DATE COMMISSION EXPIRES: Apr. 12, 2007

SIGNATURE OF DECLARANT:

PRINT NAME OF DECLARANT: **Ashish Kumar**

CITY & STATE OF EXECUTION: **Oakland, California**

DATE SIGNED: 9/20/07

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

"GRANTEE", upon behalf of itself, it successors and assigns, by acceptance of this Grant Deed, agrees to be bound by each and every provision of this Grant Deed, the Master Declaration for Title 7 and Dispute Resolution recorded against the Property, including all exhibits thereto, and the Individual Declaration and Notices for Title 7 and Dispute Resolution recorded concurrently with this Grant Deed and made a part hereof with the same force and effect as though it had been set forth herein.

STATE OF CALIFORNIA)SS
COUNTY OF SANTA CLARA)

On Sep 15th, 2004, before me, THOMAS MINHTAM PHAN, Notary Public
personally appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

THOMAS MINHTAM PHAN
Commission # 1371614
Notary Public - California
Santa Clara County
My Comm. Expires Aug 24, 2006

Signature _____

Notary Name: MINH TAM THOMAS PHAN Notary Phone: _____
Notary Registration Number: 1371514 County of Principal Place of Business: SANTA CLARA
State: CA COMM. EXP. AUG. 24, 2006
(925) 225-2663

LEGAL DESCRIPTION

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

Lot 159, Tract 7387, filed June 24, 2003, Map Book 271, Pages 1-34, Alameda County Records.

APN: 074-0905-007-01 (portion)
074-0905-008-02 (portion)

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:

2118 Coral Sea Street
Alameda, CA 94501

2004405518 09/08/2004 08:30 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 18.00
COUNTY TAX: 836.00
CITY TAX: 4180.00

4 PGS

Space Above This Line for Recorder's Use Only

A.P.N.: 074-0905-007

File No.: **0730-738704-156(RM)**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX $836.00; CITY TRANSFER TAX $4,180.00
SURVEY MONUMENT FEE $

[x] computed on the consideration or full value of property conveyed, OR
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[ ] unincorporated area; [x] City of Alameda, and

CORPORATION GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Bayport Alameda Associates, LLC, a Delaware Limited Liability Company**

organized under the laws of the State of **Delaware**

hereby GRANTS to

the following described property in the City of **Alameda**, County of **Alameda**, State of **California**;

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO the Declaration of Restrictions recorded June 26, 2003 as Instrument No. 2003-372956, Official Records of Alameda County and any modifications and/or amendments thereto and is hereby incorporated by reference into the body of this instrument the same as though fully set forth herein.

Bayport Alameda Associates, LLC,
a Delaware Limited Liability Company
By: Warmington Alameda Associates, L.P.
a California Limited Partnership; Homebuilding Manager
By: Warmington Homes California,
a California Corporation, Partner

Date: 8/25/04

By: _____
Michael W. McClellan, President

Mail Tax Statements To: **SAME AS ABOVE**

STATE OF California)SS
COUNTY OF Contra Costa)

On August 25, 2004, before me, Robin L. Neizman personally appeared Michael W. McClellan, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/~~they~~ executed the same in his/~~her/their~~ authorized capacity(les), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

This area for official notarial seal

Signature [signature]

My Commission Expires: 4/12/07

ROBIN L. NEIZMAN
Comm. # 1408068
NOTARY PUBLIC - CALIFORNIA
Contra Costa County
My Comm. Expires April 12, 2007

Notary Name: Robin L. Neizman Notary Phone: 925-356-7000
Notary Registration Number: 1408068 County of Principal Place of Business: Contra Costa
state: California

"GRANTEE", upon behalf of itself, it successors and assigns, by acceptance of this Grant Deed, agrees to be bound by each and every provision of this Grant Deed, the Master Declaration for Title 7 and Dispute Resolution recorded against the Property, including all exhibits thereto, and the Individual Declaration and Notices for Title 7 and Dispute Resolution recorded concurrently with this Grant Deed and made a part hereof with the same force and effect as though it had been set forth herein.

STATE OF California)SS
COUNTY OF Alameda)

On September 2, 2004, before me, Staci Castagnetto personally appeared
~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

STACI CASTAGNETTO
Commission # 1388180
Notary Public - California
Contra Costa County
My Comm. Expires Dec 3, 2006

This area for official notarial seal

Signature Staci Castagnetto

Notary Name: Staci Castagnetto Notary Phone: 925 260-9779
Notary Registration Number: 1388180 County of Principal Place of Business: Contra Costa

LEGAL DESCRIPTION

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

Lot 156, Tract 7387, filed June 24, 2003, Map Book 271, Pages 1-34, Alameda County Records.

APN: 074-0905-007-01 (Portion)
074-0905-008-02 (Portion)

12

RECORDED AT THE REQUEST OF:
First American Title 0129-6010897

WHEN RECORDED RETURN TO:

Catellus Residential Group
1999 Harrison Street
Suite 2150
Oakland, CA 94612

AP3
51
CA

2003372956 06/26/2003 08:30 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 157.00

51 PGS

DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF BAYPORT

A Common Interest Development

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

LITTLE & SAPUTO
ATTORNEYS AT LAW
1901 OLYMPIC BOULEVARD, #100
WALNUT CREEK, CA 94596-5024
(925) 944-5000

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LITTLE & SAPUTO
ATTORNEYS AT LAW
1901 OLYMPIC BOULEVARD, #100
WALNUT CREEK, CA 94596-5024
(925) 944-5000

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LITTLE & SAPUTO
ATTORNEYS AT LAW
1901 OLYMPIC BOULEVARD, #100
WALNUT CREEK, CA 94596-5024
(925) 944-5000

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BAYPORT

A Common Interest Development

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BAYPORT ("Declaration") is made by Catellus Residential Group, Inc., a California corporation ("Declarant.")

ARTICLE I
APPLICABILITY & DISCLOSURES

1.1 FACTS: This Declaration is made with reference to the following facts:

1.1.1 Property Owned by Declarant: Declarant is the owner of all the real property and Improvements thereon located in the City of Alameda, County of Alameda, State of California, described as follows ("Subject Property"):

> Lots 155 through 197, inclusive, and Lots HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR and SS as shown on the subdivision map of Tract 7387 filed for record on June 24, 2003, in Book 271 of Maps at Pages 1 through 34, inclusive, in the Official Records of the County of Alameda, State of California.

1.1.2 Nature of Project: Declarant intends to develop the Subject Property and the Additional Property as a Common Interest Development which shall be a planned development as defined in California Civil Code Section 1351(k). The Project is intended to be created in conformity with the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code, Section 1350 et seq.). To establish the Project, Declarant desires to impose on the Subject Property, and any property annexed thereto, these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within the Subject Property and any property annexed thereto.

1.1.3 Phases of Project: The Subject Property and the Additional Property are intended to be developed in two (2) or more Phases. The first Phase consists of the Subject Property. Prior to annexation, the Additional Property will not be subject to any provision of this Declaration. All or any portion of the Additional Property may be annexed to the Project by recording a Declaration of Annexation in compliance with the provisions of this Declaration.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Civil Code Sections 1353 and 1354, Declarant hereby declares that the Project and all Improvements thereon are subject to the provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, development and management of the Project as a Common Interest Development. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Project and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Project. After recordation

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of a Declaration of Annexation, the property described therein will constitute a part of the Project and will be subject to this Declaration.

1.3 BOUNDARY MODIFICATIONS: If the boundaries of real property change as a result of one or more subsequently recorded final maps, amended final maps, parcel maps, amended parcel maps, certificates of correction, lot line adjustments and/or records of survey, then, for all purposes of this Declaration:

1.3.1 Added to Common Area: Property which is removed from a Lot or a Common Area parcel and added to a Common Area parcel shall thereafter be part of that Common Area parcel;

1.3.2 Added to Lot: Property which is removed from a Lot or a Common Area parcel and added to a Lot shall thereafter be part of that Lot;

1.3.3 Removed From Declaration: Property which is removed from a Lot or Common Area parcel and added to real property which is not subject to this Declaration shall no longer constitute a part of such Lot or Common Area and shall no longer be subject to this Declaration.

1.3.4 Added to Declaration: Property not subject to this Declaration which is added to a Lot or Common Area parcel shall be part of the Lot or Common Area parcel to which it is added and shall automatically be subject to all provisions of this Declaration.

1.4 MUNICIPAL SERVICES DISTRICT: The Project will be part of a municipal services district known as "Bayport Municipal Services District" ("District.") If the Association fails to perform Maintenance required of it by this Declaration, the District has the right but not the obligation to assume responsibility for such maintenance and to assess the costs of such maintenance to Owners through assessments levied by the District.

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ARTICLE II
DEFINITIONS

Unless otherwise defined or unless the context clearly requires a different meaning, the terms used in this Declaration, the Map and any grant deed to a Lot shall have the meanings specified in this Article.

2.1 ADDITIONAL CHARGES: The term "Additional Charges" shall mean costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 ADDITIONAL PROPERTY: The term "Additional Property" shall mean the real property described on Exhibit "A" and all Improvements situated on such real property.

2.3 ALTERATION: The term "Alteration" shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing, and/or changing the color or shade of any Improvement.

2.4 ARTICLES: The term "Articles" shall mean the Articles of Incorporation of Bayport Owners' Association, which are or shall be filed in the Office of the Secretary of State of the State of California.

2.5 ASSOCIATION: The term "Association" shall mean Bayport Owners' Association, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.

2.6 BAYPORT ASSOCIATES: The term "Bayport Associates" shall mean Bayport Alameda Associates, LLC, a California limited liability company.

2.7 BOARD: The term "Board" shall mean the Board of Directors of the Association.

2.8 BUDGET: The term "Budget" shall mean a pro forma operating budget prepared by the Board in accordance with Section 6.7.1 of this Declaration.

2.9 BUILDER: The term "Builder" shall mean Bayport Associates. The term "Builder" shall also mean an Owner who (i) is designated as a Builder by Declarant in a Declaration of Annexation or other writing delivered to the Association, and (ii) acquires from Declarant or a Builder at least five (5) Lots prior to the completion of construction of Residences on those Lots. A Builder may also be a Declarant, if the provisions of Section 2.14 are satisfied.

2.10 BYLAWS: The term "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

2.11 CITY: The term "City" shall mean the City of Alameda, California.

2.12 COMMON AREA: The term "Common Area" shall mean Lots HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR and SS, as shown on the Map. Common Area includes Lanes unless otherwise provided. The term "Common Area" shall also mean any property described as Common Area in a Declaration of Annexation and any real property estate or interest owned by the Association. Common Area includes all Improvements situated thereon or therein.

2.13 COUNTY: The term "County" shall mean the County of Alameda, State of California.

2.14 DECLARANT: The term Declarant shall mean Catellus Residential Group, Inc., a California corporation. The term Declarant shall also mean any person or entity to which Declarant shall have assigned any rights under this Declaration, in whole or in part, by express written assignment. Any

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such assignment may include some or all of the rights of the Declarant and may be subject to such conditions or limitations as Declarant may impose in its sole and absolute discretion. There may be more than two (2) Declarants at any given time. Each Declarant is entitled to exercise all Declarant rights independently of each other Declarant, subject to any limitations set forth in the written assignment.

2.15 DECLARATION: The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Bayport and includes any subsequently recorded amendments.

2.16 DECLARATION OF ANNEXATION: The term "Declaration of Annexation" shall mean any instrument recorded in the County which extends the provisions of this Declaration to all or a portion of the Additional Property or any other property.

2.17 FIRST MORTGAGE: The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot.

2.18 FIRST MORTGAGEE: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage. The term "First Mortgagee" shall also include an insurer or governmental guarantor of a First Mortgage including, without limitation, the Federal Housing Authority and the Department of Veterans Affairs.

2.19 IMPROVEMENTS: The term "Improvements" shall mean everything constructed, installed or planted on real property, including without limitation, buildings, streets, fences, walls, retaining walls, paving, pipes, wires, grading, landscaping, lighting, roadway and pavement markers, sidewalks, irrigation systems, specialty paving, subdrains, storm drainage, sanitary sewer, driveways, curbs, gutters, signs, exterior furniture, grasscrete, fountains, installed sculpture and other works of improvement as defined in Section 3106 of the California Civil Code, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

2.20 INVITEE: The term "Invitee" shall mean any person whose presence within the Project is approved by or is at the request of the Association or a particular Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.21 LANE: The term "Lane" shall mean Lots JJ, LL, OO, and RR as shown on the Map. The term "Lane" shall also mean any property described as an Lane in a Declaration of Annexation. Lane includes all Improvements situated thereon or therein.

2.22 LOT: The term "Lot" refers to a Separate Interest as defined in California Civil Code Section 1351(l) and shall mean Lots 155 through 197, inclusive, as shown on the Map. The term "Lot" shall also mean any Lot described as such in a Declaration of Annexation. Lot includes all Improvements situated thereon or therein.

2.23 MAINTAIN: The term "Maintain" or "Maintained" (but not the word "maintenance") shall mean taking all actions reasonably necessary, including those required by law, to keep an Improvement in first class condition and repair, which actions include but are not limited to regular inspections, cleaning, painting, striping, re-striping, sweeping streets, cleaning drainage improvements, refinishing, repairing, replacing and reconstructing the Improvement, emptying trash receptacles, and in the case of landscaping, irrigating and fertilizing the landscaping and trimming, pruning and replacing trees. The Owners and the Association shall have no responsibility to Maintain any Improvement Maintained by a third party or the public or a quasi-public entity or utility company even if the third party or the public or a quasi-public entity or utility company fails to perform all actions required by this Section.

2.24 MAINTENANCE MANUAL: The term "Maintenance Manual" shall mean the Association Maintenance Manual and the Owner Maintenance Manual, unless otherwise provided.

2.24.1 Association Maintenance Manual: The term "Association Maintenance Manual" shall mean the documents which establish procedures, practices, specifications, scopes and intervals for

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the Association to Maintain the Improvements for which the Association is responsible. The Association Maintenance Manual is attached to the Title 7 Master Declaration which applies to the first Phase. The Association Maintenance Manual for a subsequent Phase shall be the Association Maintenance Manual attached to the Title 7 Master Declaration which applies to that Phase. The Association Maintenance Manual may be amended from time to time as provided in the applicable Title 7 Master Declaration. If an Association Maintenance Manual is amended with the consent of the Association, the amendment shall apply to all Association Maintained Improvements which are subject to that Title 7 Master Declaration. If the Association Maintenance Manual is amended without the consent of the Association, the amendment shall apply only to those portions of the Project which are not then owned by the Association or any Owner and shall not apply to any Improvements which the Association is already Maintaining. There may be more than one (1) Association Maintenance Manual at any given time, each of which applies to different Improvements.

2.24.2 Owner Maintenance Manual: The term "Owner Maintenance Manual" shall mean the documents which establish procedures, practices, specifications, scopes and intervals for the Owner to Maintain the Improvements for which an Owner is responsible. The Owner Maintenance Manual is attached to the Title 7 Master Declaration which applies to the first Phase. The Owner Maintenance Manual for Lots in a subsequent Phase of the Project shall be the Owner Maintenance Manual attached to the Title 7 Master Declaration which applies to that Phase. The Owner Maintenance Manual may be amended from time to time as provided in the applicable Title 7 Master Declaration. If the Owner Maintenance Manual is amended, the amendment shall apply only to those portions of the Project which are not owned by the Association or any Owner and shall not apply to any Improvements which an Owner is already Maintaining. The Owner Maintenance Manual applicable to a specific Lot may also be amended or superceded by a Maintenance Manual attached to a Title 7 Individual Agreement. Different Owner Maintenance Manuals may apply to different Lots.

2.25 MAP: The term "Map" shall mean the subdivision map of Tract 7387 recorded on June 24, 2003, in Book 271 of Maps at Pages 1 through 34, inclusive, in the Official Records of the County, including any subsequently recorded amended final maps, parcel maps, certificates of correction, lot line adjustments and/or records of survey. The term "Map" shall also mean any recorded subdivision map described in a Declaration of Annexation.

2.26 MEMBER: The term "Member" shall mean an Owner.

2.27 MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

2.28 MORTGAGEE: The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.29 NOTICE AND HEARING: The term "Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.30 OWNER: The term "Owner" shall mean the holder of record fee title to a Lot, including Declarant as to each Lot owned by Declarant, and Builder as to each Lot owned by Builder. If more than one person owns a single Lot, the term "Owner" shall mean all owners of that Lot. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude the contract vendor and any person having an interest in a Lot merely as security for performance of an obligation.

2.31 PARTY FENCE: The term "Party Fence" shall mean any portion of a fence or wall which is constructed and placed so as to physically separate one (1) Lot from another Lot, whether the fence or wall is situated approximately along a common Lot boundary or an easement boundary. If a Party Fence is attached to the top of a wall, that wall shall be deemed to be part of the Party Fence for all purposes of this Declaration.

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2.32 PARTY FOUNDATION: The term "Party Foundation" shall mean any portions of a foundation common to two (2) Residences which cannot be independently Maintained.

2.33 PARTY WALL: The term "Party Wall" shall mean any wall or wall system originally constructed by Declarant or Builder which separates two (2) or more Residences and which is placed on or immediately adjacent to the common boundary of two (2) or more Lots.

2.34 PHASE: The term "Phase" shall mean any Lots and/or Common Area which are simultaneously made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation. More than one Phase may be established in any Declaration of Annexation.

2.35 PROJECT: The term "Project" shall mean the Subject Property and any property described in a Declaration of Annexation.

2.36 PROJECT DOCUMENTS: The term "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Rules.

2.37 PUBLIC REPORT: The term "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for one or more Phases of the Project.

2.38 RESIDENCE: The term "Residence" shall mean a dwelling situated on a Lot, including any garage also situated on a Lot.

2.39 RESTORE: The term "restore" shall mean repairing, rebuilding or reconstructing a damaged Improvement to substantially the same condition and appearance in which it existed prior to the damage.

2.40 RULES: The term "Rules" shall mean the rules adopted by the Board, including architectural guidelines, restrictions and procedures.

2.41 SUBJECT PROPERTY: The term "Subject Property" shall mean Lots 155 through 197, inclusive, and Lots HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR and SS, as shown on the Map and all Improvements thereon.

2.42 TITLE 7 INDIVIDUAL AGREEMENT: The term "Title 7 Individual Agreement" shall mean an instrument (a) signed by the initial Owner of a Lot (as that term is defined in the Title 7 Individual Agreement") and the person or entity who conveys title to the Lot to the initial Owner, (b) recorded in the County and (c) which specifies that it is a "Title 7 Individual Agreement" as defined in the Title 7 Master Declaration, including any subsequently recorded amendments.

2.43 TITLE 7 INDIVIDUAL AGREEMENT: The term "Title 7 Individual Agreement" shall mean an instrument signed by Declarant and the initial Owner (other than a Declarant) of a Lot which is recorded in the County and which specifies that it is a "Title 7 Individual Agreement" as defined in the Title 7 Master Declaration, including any subsequently recorded amendments.

2.44 TITLE 7 MASTER DECLARATION: The term "Title 7 Master Declaration" shall mean an instrument signed by a Declarant or a Builder which is recorded in the County against all or a portion of the Project and which specifies that it is a "Title 7 Master Declaration" contemplated by this Declaration, including any subsequently recorded amendments. There may be more than one Title 7 Master Declaration, each of which is applicable to a different portion of the Project.

2.45 VISIBLE: The term "Visible" shall mean the item described can be seen by a six (6) foot tall person standing on the described area, or if no area is described, on any portion of the street which provides access to the Residence.

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ARTICLE III
OWNERSHIP AND EASEMENTS

3.1 SEVERABILITY: The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance. The ownership interests in the Common Area and Lots described in this Article are subject to the easements described, granted and reserved in this Declaration. Each of the easements described, granted or reserved herein shall be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Project.

3.2 OWNERSHIP OF LOTS: Title to each Lot in the Project shall be conveyed in fee to an Owner.

3.3 OWNERSHIP OF COMMON AREA: Title to or a legal ownership interest in the Common Area in each Phase shall be conveyed to the Association prior to or concurrently with the conveyance of the first Lot in that particular Phase to an Owner. The Association shall be deemed to have accepted the Common Area conveyed to it when (i) a grant deed conveying title to the Common Area has been recorded in the Official Records of the County and (ii) assessments for the Phase in which the Common Area is located have commenced.

3.4 OWNERSHIP OF PARTY FENCES: Each Owner of a Lot upon which a Party Fence is situated shall own that portion of the fence or wall from the surface which faces the Owner's Lot up to the center of the Party Fence.

3.5 OWNERSHIP OF PARTY FOUNDATIONS AND PARTY WALLS: Each Owner of a Lot upon which a Party Wall and Party Foundation are situated shall own that portion of (a) the Party Wall which encloses the Owner's Residence to the center of the air space separation between the two (2) Residences and (b) the Party Foundation which is situated on the Lot to a vertical plane extended from the center of the air space separation between the two (2) Residences.

3.6 EASEMENTS: The easements and rights specified in this Article are hereby created and shall exist whether or not they are also set forth in individual grant deeds to Lots. By reference to this Declaration, each grant deed to a Lot shall be deemed to be conveyed with the benefit of and subject to all applicable easements set forth in this Section.

3.6.1 Adjoining Property: Declarant has and hereby expressly reserves, a right and easement over and across the Common Area for the purposes of reasonable ingress to and egress from, over, across and through the Project, including private roads and pathways, to the Additional Property until all of the Additional Property is annexed to the Project. Declarant hereby expressly grants to Builder a right and easement over and across the Common Area for the purposes of reasonable ingress to and egress from, over and across the Project, including private roads and pathways, to the Additional Property until all of the Additional Property is annexed to the Project.

3.6.2 Annexation of Additional Property: Upon the recordation of a Declaration of Annexation, the Lots and the Owners of Lots in the annexed Phase shall have all of the rights and easements specified in this Article and the Lots and the Owners of Lots in the Project prior to annexation shall have all of the easements specified in this Article as though the annexed Phase were initially part of the Project.

3.6.3 Association: The Association and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform the duties and obligations of the

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Association set forth in the Project Documents, including the right to enter upon Lots, subject to the limitations contained in this Declaration.

3.6.4 Common Area: Every Owner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities;

(b) The right of the Association to grant, convey and dedicate fee title to or easements over all or any portion of the Common Area; and

(c) Any easement which affects the Common Area or which is set forth in the deed which conveys the Common Area to the Association.

3.6.5 Encroachment: Non-exclusive rights and easements are reserved and granted (i) for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and the Common Area, as servient tenement, and (ii) for the benefit of the Common Area, as dominant tenement, over, under and across each Lot, as servient tenement. Such easements shall be for the purposes of encroachment, support, occupancy and use of such portions of Lots and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof. If any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the encroaching Improvement shall exist for as long as the encroachment exists, provided that no easement for encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by repair or restoration of the Improvement.

3.6.6 Governmental Entities: All governmental and quasi-governmental entities, agencies and utilities and their agents shall have a non-exclusive easement over the Common Area for the purposes of performing their duties within the Project.

3.6.7 Mailboxes: Each Owner whose mailbox is not located on that Owner's Lot shall have a non-exclusive easement to use the mailbox over those portions of the Project on which the mailbox is located.

3.6.8 Map: The Common Area and Lots are subject to all easements and rights of way shown on the Map.

3.6.9 Party Fences: Each Owner of a Lot containing a Party Fence shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as are necessary to Maintain the Party Fence.

3.6.10 Party Foundations and Party Walls: Each Owner of a Lot upon which a Party Foundation and Party Wall are located shall have reciprocal non-exclusive easements over and across such portions of the contiguous Lot as are necessary to (i) Maintain the Party Foundation and Party Wall, (ii) to Maintain the roof of the Owner's Residence, and (iii) to repaint the exterior of the Owner's Residence.

3.6.11 Roof Overhangs: Each Owner of a Lot whose roof overhangs one or more Lots and/or Common Area shall have a non-exclusive easement over and across such portions of the contiguous Lot or Lots and/or Common Area as are necessary to accommodate the roof overhang.

3.6.12 Storm Drains: There are reserved and granted for the benefit of each Lot and the Common Area, over, under, across and through the Project, except Residences, non-exclusive easements for surface and subsurface storm drains and the flow of water in accordance with natural drainage patterns

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and the drainage patterns and Improvements installed or constructed by Declarant or Builder. Additionally, this Declaration and each Lot and the Common Area shall be subject to all easements granted by Declarant or Builder to install and Maintain drainage Improvements necessary for the development of the Project.

3.6.13 Support: The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Lots through each Lot and the Common Area to support and Maintain the Common Area and all Lots.

3.6.14 Utilities: Each Owner shall have a non-exclusive right and easement over, under, across and through the Project, except for portions of the Project on which a structure is situated, for utility lines, pipes, wires and conduits installed by Declarant, Builder or utility agencies. Additionally, this Declaration and each Lot and the Common Area shall be subject to all easements granted by Declarant or Builder to install and Maintain utilities necessary for the development of the Project.

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ARTICLE IV
USE RESTRICTIONS

4.1 ALTERATIONS: Except as otherwise specifically provided in this Declaration, no Alteration may be made to any Improvement until plans have been submitted and approved pursuant to Article XI.

4.2 ANIMALS: An Owner may keep not more than a total of two (2) dogs, cats and other customarily uncaged household pets within the Owner's Lot. Each Owner may also keep a reasonable number of small caged animals, birds or fish. Unless the Rules increase the number or type of animals which may be kept, no other animals or pets are permitted in the Project. The Board shall have the right to prohibit the keeping of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. No animals may be kept for commercial purposes. No dog shall be allowed in the Common Area unless it is under the control of a responsible person by leash or other means. Each Owner or Invitee shall Restore the Common Area to the condition it was in immediately preceding its use by any dog permitted on the Common Area by the Owner or Invitee.

4.3 ANTENNAS AND SATELLITE DISHES: No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Video Antennas") with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Lot. Video antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to the Architectural Standards and, if then required by the Architectural Standards, any necessary approval is obtained in accordance with the provisions of Article XI. Reasonable restrictions which do not significantly increase the cost of the Video Antenna system or its installation or significantly decrease its efficiency or performance may be imposed.

4.4 DRAINAGE: No Owner shall make any Alteration to the drainage patterns and facilities in the Project until plans have been submitted and approved pursuant to Article XI and any public authority with jurisdiction over the Alteration.

4.4.1 Positive Drainage: This Declaration provides notice to each Owner to devote great care and attention to grading and to establishing and preserving positive drainage away from the entire foundation line of the Owner's Residence. Positive drainage is achieved by shaping Lot grades, establishing drainage "swales" or installing underground area drains. The swales and drains provide a receptacle and conduit to drain water away from the foundation, and the rear, side and front of the Residence to offsite drainage disposal. Swales also prevent drainage water from moving across a Lot to another Lot, Common Area or other property. This Declaration also provides notice to each Owner that if existing drainage swales established on the Lot and around the Residence are interrupted, blocked, filled, or otherwise altered, serious damage can result. Drainage must not be allowed to pond in a yard or run against or under a Residence, foundation, garage floor, driveway or other Improvement. Serious damage can result even during a short period of time.

4.4.2 Down Spouts: Residences will be constructed with roof gutters and down spouts that connect to a drain line with bubble-up risers, which, in turn, flow overland to the drainage system beyond the Lot boundary. The Owner of a Residence shall not alter this system.

4.5 ENCROACHMENTS: No portion of any Improvement, other than paving, landscaping (excluding trees), and components of utility systems including storm drainage and irrigation, may encroach into any portion of the Project shown on the Map as "Pedestrian Access Easement," "Public Utility Easement, " "Storm Drain Easement," "Storm Drain Detention Easement," "Sanitary Sewer Easement," "Water Line Easement," or "Emergency Vehicle Access Easement." No masonry, heavy wall or permanent structures may be constructed within any such area except for transverse crossings approved

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by the City. Removal of any such encroachment is the responsibility of the owner of fee title to the property on which the encroachment is situated.

4.6 ENVIRONMENTAL RESTRICTIONS: No Lot shall be used in a manner that violates the environmental restrictions in any of the following documents:

4.6.1 Quitclaim Deed and Environmental Restrictions Pursuant to California Civil Code Section 1471 for East Housing Portion of NAS Alameda, recorded on July 20, 2000, as Series No. 2000-215934, in the Official Records of the County;

4.6.2 Covenant to Restrict Use of Property (Environment Restriction) recorded on July 20, 2000, as Series No. 2000-215936, in the Official Records of the County; or

4.6.3 Quitclaim Deed to Community Improvements Commission for the East Housing Portion of NAS Alameda recorded on August 2, 2001 as Series No. 2001-280972, in the Official Records of the County.

4.7 EXTERIOR LIGHTING: No Owner shall remove, damage or disable any exterior light, regardless of where located, which is connected to the Association's electric service.

4.8 GARAGE DOORS: Garage doors must open by rolling up. Garage doors which open out are not permitted. All garage doors must have automatic openers which can be controlled by remote control. Owners shall Maintain the openers and remote control units in good working order at all times.

4.9 INVITEES: Each Owner shall be responsible for compliance with the provisions of the Project Documents by that Owner's Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against an Owner for violations committed by that Owner's Invitees.

4.10 MINERAL EXPLORATION: No Lot shall be used to explore for or to remove any water oil, hydrocarbons or minerals of any kind.

4.11 PARKING: Vehicles shall not be parked anywhere in the Project except in compliance with the provisions of this Section.

4.11.1 Garages: Vehicles of any type may be parked in garages. Unless otherwise provided for in the Rules, garage doors shall remain closed, except when the garage is in use. Garages shall be kept sufficiently clear so as to permit parking of the number of vehicles for which the garage was designed. Garages may not be converted to any other use.

4.11.2 Driveways: Parking on driveways is prohibited.

4.11.3 Lanes: Parking on Lanes is prohibited at all times.

4.11.4 Other Private Street Parking: The Association shall designate "guest parking spaces" on the private streets in a number that is, at all times, not less than one-half of the number of Lots which are subject to assessment by the Association. Residents or guests may park in any remaining parking spaces on the private streets on a first-come, first served basis.

4.11.5 Public Street Parking: Parking on public streets is regulated by City ordinance.

4.11.6 Vehicle Restrictions: No boat, trailer, camper, commercial vehicle, mobile home, recreational vehicle or any inoperable vehicle shall be parked or stored where Visible from adjacent Lots or streets. No part of the Common Area shall be used for repair, construction or reconstruction of any vehicle.

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4.11.7 Guest Parking: Guest parking spaces shall be used only by Invitees of residents within the Project. Residents may not park in any guest parking space at any time. Guest parking spaces shall be clearly identified. Vehicles belonging to guests must be parked in compliance with the provisions of this Declaration.

4.11.8 Removal: The Association may impose time limitations or other restrictions which regulate parking on private streets as part of the Rules. As long as applicable ordinances and laws regarding towing vehicles are observed, including the requirements of Section 22658.2 of the California Vehicle Code, any vehicle which is parked in violation of the provisions of this Section 4.11 may be removed.

4.12 PARTICIPATION IN POLITICAL ACTIVITIES: The Association is prohibited from undertaking, performing or engaging in any Federal, State or local political activities or activities intended to influence a governmental action affecting areas outside the Project, including without limitation, the commercial project under development in close proximity to the Project. These prohibited activities include endorsement or support of legislative or administrative actions by a local governmental agency, candidates for elected or appointed office, initiatives, recall elections or other ballot proposals, and any other political activities, or expending or using the Association funds or resources for any of these political activities. The Association is further prohibited from conducting, sponsoring, participating in or expending funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a permitted function of the Board in furtherance of its duties under this Declaration.

4.13 REFUSE: All garbage, recyclable materials, trash and accumulated waste material shall be placed in appropriate containers and stored in the garage until collected. Containers for garbage, trash and accumulated waste material must be covered; recycling containers need not be covered. Containers provided by Owners may be placed on Common Area or where Visible only on the night before and the day that pick-up is to occur. Containers provided by the Association, if any, shall be stored in locations designated by the Board.

4.14 RENTAL OF LOTS: An Owner shall be entitled to rent or lease a Lot, if: (i) there is a written rental or lease agreement specifying that the tenant shall be subject to all provisions of the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the agreement; (ii) the period of the rental or lease is not less than thirty (30) days; (iii) the Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents; and (iv) the Owner gives each tenant a copy of the Project Documents. Upon satisfaction of the foregoing conditions all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Lot; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration.

4.15 RULES: The Board may promulgate Rules concerning the use of the Project by Owners and their Invitees. The Board shall have the right to limit the number of an Owner's Invitees that may use any recreational facilities. Neither an Owner nor its Invitees shall violate any provision of this Declaration, the Bylaws or the Rules as the same may be amended from time to time.

4.16 SIGNS: All signs displayed in the Project shall be attractive and compatible with the design of the Project, shall comply with all applicable local ordinances and shall be consistent with the Master Sign Program approved by the City in connection with the development of the Project. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area shall be as follows:

4.16.1 Declarant: Signs may be displayed by Declarant on Common Area or unsold Lots owned by Declarant, as Declarant deems appropriate, advertising Lots owned by Declarant for sale or rent;

4.16.2 Builder: Signs may be displayed by Builder on Common Area or unsold Lots owned by Builder, as Builder, deems appropriate, advertising Lots owned by Builder for sale or rent;

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4.16.3 Legal Proceedings: Signs required by legal proceedings may be displayed;

4.16.4 Project Identification: Appropriate signs may be displayed by the Association to identify the Project;

4.16.5 Sale or Rent: One (1) sign of reasonable dimensions may be placed on a Lot advertising the Lot for sale or rent; and

4.16.6 Signs Approved By Board: Other signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board.

4.17 SPORTS EQUIPMENT: No basketball standards, fixed sports apparatus or similar equipment shall be attached to the exterior of any Residence or permanently placed on any Lot except in accordance with the provision of Article XI. Portable or movable basketball equipment or other movable sports apparatus may not remain overnight on any Lot where Visible from adjacent Lots or streets without the prior approval of the Board.

4.18 USE AND OCCUPANCY OF RESIDENCES: Each Residence may be used for (i) residential purposes, (ii) uses within Residences which cannot be prohibited under federal or state law and (iii) uses permitted by local ordinance (provided that home occupations must be conducted in a manner that does not materially and adversely impact the ability of other Owners to use and enjoy the Project). Otherwise, no business of any kind shall be established, operated, permitted or constructed in any portion of the Project, except for the respective businesses of Declarant and Builder in completing the development and disposition of the Lots in the Project. No Residence shall be permanently occupied by any more than two (2) persons per bedroom. No Owner may permit or cause anything to be done or kept upon or in a Lot which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all of the requirements of all federal, state and local governmental authorities, and all laws, ordinances, rules and regulations applicable to the Owner's Lot.

4.19 USE OF COMMON AREA: All use of Common Area is subject to the Rules. All persons residing within the Project may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be physically done or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, or which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No waste shall be committed in the Common Area. The provisions of this Declaration concerning using, Maintaining and managing the Common Area are subject to any rights or limitations established by any easements or other encumbrances which encumber the Common Area.

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ARTICLE V
MAINTAINING IMPROVEMENTS

5.1 MAINTAINING COMMON AREA AND IMPROVEMENTS: Except as otherwise specifically provided in this Declaration or a Declaration of Annexation, the Association shall Maintain the Common Area, all Improvements situated in, upon or under the Common Area and any Improvements which a Declaration of Annexation provides are to be Maintained by the Association. The Association shall provide for all necessary services and cause all acts to be done which may be appropriate or proper to Maintain the Common Area and Improvements in first class condition.

5.1.1 Drainage Treatment Plan: Notwithstanding any other provision of this Declaration, the City is responsible for Maintaining all improvements (including those within the Common Area) which implement the Drainage Treatment Plan (as that term is defined in Section 6.7.1(a)). Such improvements include but are not limited to bioswales, small retention basins and ditches and structural filters at the storm water outfall.

5.1.2 Parking Signs: The Association shall Maintain the signs on private streets and Lanes which restrict street parking. The restrictions may not be changed without the approval of the City.

5.1.3 Sidewalks: The Association shall Maintain the sidewalks (i) within each public right of way which shares a common boundary with a Lot or Common Area, (ii) on Common Area and (iii) on Lots if the sidewalk is part of the pedestrian circulation system within the Project.

5.1.4 Lighting: All lighting situated on Common Area shall be Maintained by the Association.

5.1.5 Storm Drainage: The Association shall Maintain all portions of the storm drain system which collect and transport storm water from Common Area to the point of connection with the publicly maintained storm drainage system except that the City will Maintain the main line and the catch basins in the streets (excluding Lanes.) The Association shall Maintain all perforated subsurface drainage pipes designed to protect the pavement system integrity within Common Area. The Association shall also Maintain any portion of the storm drain system which serves more than one Lot but which is not part of the publicly maintained system, irrespective of the location of the component. Connections to the public storm drain system may not be made or repaired without first obtaining the appropriate permit from the City.

5.1.6 Regular Inspections by Association: The Association shall regularly inspect all major components of the Common Area at least once each year. One of the primary purposes of the inspection shall be to determine how to extend the life of Common Area Improvements and to prevent damage to such Improvements resulting from the Association's neglect or the failure to properly and adequately Maintain.

5.1.7 Compliance With Association Maintenance Manual: The Association shall Maintain the Project in compliance with all applicable requirements imposed by the Association Maintenance Manual.

5.1.8 Records: The Association shall keep appropriate records to document that it has performed all inspections and Maintained all Improvements in compliance with the Association Maintenance Manual.

5.2 ALTERATIONS TO COMMON AREA:

5.2.1 Approval: Alterations to any Improvements situated in, upon or under the Common Area may be made only by the Association. A proposal for an Alteration to an Improvement may be made

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at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2 Funding: Expenditures to Maintain an existing capital Improvement for which reserves have been collected may be made from the Reserve Account. Subject to the limitations set forth in Section 6.5, the Board may levy a Special Assessment to fund any Alteration of an Improvement for which no reserve has been collected.

5.3 MAINTAINING LOTS AND RESIDENCES: Except as otherwise specifically provided in this Declaration or a Declaration of Annexation, each Owner shall Maintain the Owner's Lot, including the Residence and other Improvements located thereon in compliance with the provisions of the Owner Maintenance Manual and in a manner consistent with the standards established by the Project Documents and in compliance with the Architectural Standards.

5.3.1 Driveways: Each Owner shall Maintain all portions of the driveway which provides access between the Owner's Residence and the street or Lane which provides access to that Lot.

5.3.2 Lots Which Front On A Mini-Park: The provisions of this Section apply only to Lots (i) which front on a mini-park and (ii) whose utility lateral(s) or line between the Residence and the point of service by the provider extends through some portion of the mini-park. Notwithstanding the provisions of Section 5.3.8, below, if such a lateral or line needs to be repaired or replaced, the Association shall perform the repair or replacement and shall Restore the disturbed area at the expense of the Owner of the Lot.

5.3.3 Mailboxes: The Association shall Maintain all mailboxes and the support structures for all mailboxes.

5.3.4 Party Foundations and Party Walls: The Owners of a Party Foundation and Party Wall shall Maintain them and shall share the costs of Maintaining them equally, except that all costs of Maintaining a Party Foundation or Party Wall which are the result of the negligent or willful action of an Owner shall be borne by that Owner. An Owner who Maintains a Party Foundation or Party Wall is entitled to and has a right of contribution from the other Owners of the Party Foundation and Party Wall which shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

5.3.5 Public Utility Easements: The Association shall Maintain each Improvement within each "Pedestrian Access Easement," "Public Utility Easement, " "Storm Drain Easement," "Storm Drain Detention Easement," "Sanitary Sewer Easement," "Water Line Easement," or "Emergency Vehicle Access Easement" shown on the Map if (a) the Improvement is not Maintained by the public or a utility company and (b) the Improvement serves more than one (1) Lot. If the City or a utility company performs work within any such easement, the owner of fee title to the property on which the easement is situated shall be responsible for removing and reinstalling any Improvements within the easement which are disturbed by the work.

5.3.6 Sidewalks: The Association shall Maintain sidewalks within Lots which provide pedestrian circulation through the Project. Each Owner shall Maintain all other walkways on the Owner's Lot.

5.3.7 Storm Drains: Each Owner shall Maintain all portions of the storm drain system which serve only the Owner's Lot, irrespective of the location of the component, up to the point at which the drainage (a) is joined by drainage from another Lot or Common Area, or (b) reaches the publicly maintained portion of the storm drainage system. Any work an Owner needs to perform which affects Common Area shall be performed by the Association at the expense of the Owner of the Lot. Each Owner shall maintain the grade of all swales and clean all catch basins and other storm drainage Improvements within the Owner's Lot so that the swales and drainage Improvement function as they were designed to function.

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5.3.8 Utility Lines Serving A Single Lot: Except as provided in Section 5.3.2, above, each Owner shall Maintain those portions of all utility lines which (i) are not Maintained by the public or a quasi-public entity or utility company and (ii) serve only that Owner's Lot, irrespective of whether the utility line is located on Common Area or on one (1) or more Lots. An Owner shall promptly Restore any Common Area which is disturbed by the repair.

5.3.9 Utility Lines Serving More Than One Lot: The Association shall Maintain those portions of all utility lines which (i) are not Maintained by the public or a quasi-public entity or utility company and (ii) serve more than one (1) Lot, irrespective of whether the utility line is located on Common Area or on one (1) or more Lots.

5.4 ALTERATIONS TO LOTS AND RESIDENCES:

5.4.1 City Approval: If the proposed Alteration involves constructing an accessory structure, an addition to a Residence or adding habitable space to the Residence, the Owner must apply to the City and obtain an amendment to the Planned Development Permit for the Project. If the proposed Alteration complies with the Planned Development Permit for the Project, the Owner must apply to the City and obtain design review approval.

5.4.2 Approval Pursuant to Article XI: Alterations may be made to the interior of an Owner's Residence without obtaining approval pursuant to Article XI if the Alterations do not impair the structural integrity of the Residence. Proposals for Alterations on Lots, including the exteriors of Residences, are subject to the provisions of Article XI.

5.5 MAINTAINING FENCES: If a fence is attached to the top of a wall, that wall shall be deemed to be part of the fence for all purposes in this Declaration, unless otherwise specified.

5.5.1 Party Fences: The Owners of a Party Fence shall Maintain it and shall share the costs of Maintaining it equally except that all costs of Maintaining the Party Fence which are a result of the negligent or willful action of an Owner shall be borne by that Owner. An Owner who Maintains a Party Fence is entitled to and has a right of contribution from the other Owners of the Party Fence, which shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

5.5.2 Fences Separating Common Area and Lots: Each fence that separates a Lot from Common Area shall be Maintained by the Owner of the Lot, except for the surface facing the Common Area which shall be Maintained by the Association. Maintaining includes refinishing the exterior surface of the fence if that surface was previously finished with paint or stain.

5.5.3 Atlantic Avenue Wall: The wall which separates the Project from Atlantic Avenue shall be Maintained by the Association, except for the surface facing toward a Residence and accessible only through the yard of an Owner which shall be Maintained by the Owner of the Lot. The Association shall also remove graffiti from the wall.

5.5.4 Other Fences: Except as provided in Sections 5.5.1 and 5.5.2, above, the Owner of a Lot shall Maintain all fences, fence posts, gates and walls which are either situated entirely within the boundaries of an Owner's Lot or which separate the Owner's Lot from property located outside the boundaries of the Project.

5.6 LANDSCAPING: All landscaping in the Project shall be Maintained in a manner consistent with the standards of design and quality as originally established by Declarant or Builder. All landscaping shall be Maintained in a neat and orderly condition. Weeds shall be removed and any diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Other specific restrictions on landscaping may be established in the Rules. Irrigation systems, if any, shall be kept in good working condition to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

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5.6.1 Common Area: The Association shall Maintain all landscaping located on Common Area, including street trees.

5.6.2 Lots: Each Owner shall Maintain all landscaping located within the Owner's Lot, including street trees, if any. If landscaping within the unenclosed portions of a Lot is not installed by Declarant or Builder, the Owner of the Lot shall install permanent landscaping within the unenclosed portions of the Owner's Lot within three (3) months after the conveyance of the Lot by Declarant or Builder to the Owner. The Owner of the Lot shall install permanent landscaping within the enclosed portions of the Owner's Lot within one (1) year after the initial conveyance of the Lot to the Owner.

5.6.3 Public Right of Way: If the Project is developed as proposed, the Association shall Maintain the landscaping situated between the Project boundary and the back of the nearest curb in each of the following areas ("Areas"): (a) along the north side of Atlantic Avenue, (b) along the west side of Fifth Street, (c) along the south side of Tinker Avenue, (d) on both sides of Mosley Avenue, (e) on both sides of Coral Sea Street, (f) on both sides of Jack London Avenue, and (g) on both sides of Neptune Gardens Avenue. Additional portions of public rights of way for which the Association will be responsible may be described in one or more Declarations of Annexation. An Area may be further divided so that responsibility for the entire Area is transferred over more than one (1) Phase.

Upon the commencement of assessments for the first Phase of the Project, the Association shall Maintain the landscaping (a) in the area between the Project boundary and the back of the nearest curb along the west side of Fifth Street between Atlantic Avenue and Neptune Gardens Avenue and (b) within the public right of way along (i) Coral Sea Street between Atlantic Avenue and Neptune Gardens Avenue and (ii) Neptune Gardens Avenue between Fifth Street and Coral Sea Avenue. The Association has no obligation to begin Maintaining any other Area or any portion of any Area until a Declaration of Annexation describes the Area (or portion thereof) and states when the Association is required to begin Maintaining the Area.

5.6.4 Interim Phasing Irrigation Expenses: During construction of the Project, Declarant and Builder may use water from an Association water meter to serve Additional Property which is not then annexed into the Project and Maintained by the Association. So long as Additional Property which is not then annexed into the Project and Maintained by the Association is so served by water connected to the Association's water meter(s), the Association shall have the right to recover from Declarant or Builder the amount by which the Association's costs for water service exceed the costs for water service as set forth in the Association's Budget.

5.7 ASSOCIATION'S RIGHT TO ENTER AND MAINTAIN: If an Owner fails to install landscaping as required by Section 5.6.2 or if an Owner fails to Maintain an Improvement which that Owner is obligated to Maintain pursuant to this Declaration (collectively "Required Work"), and if the Association determines, after Notice and Hearing given pursuant to the provisions of the Bylaws, that the Required Work must be performed to Maintain the Improvement to preserve the attractiveness, quality, nature and/or value of the Project, the Association may perform the Required Work. The costs of the Required Work shall be charged to the Owner of the Lot as a Reimbursement Assessment. In order to effectuate the provisions of this Declaration, the Association may enter any Lot whenever entry is necessary to Maintain an Improvement which the Association is authorized to undertake pursuant to this Section. Entry within a Lot shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than forty-eight (48) hours, except in emergency situations.

5.8 DAMAGE AND DESTRUCTION — ASSOCIATION: If fire or other casualty damage extends to any Improvement which is insured under an insurance policy held by the Association, the Association shall proceed with the filing and adjustment of all claims arising under the existing policies. The insurance proceeds shall be paid to and held by the Association.

5.8.1 Bids: Whenever restoration is to be performed pursuant to this Section, the Board shall obtain such bids from responsible licensed contractors to Restore the damaged Improvement as the

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Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable.

5.8.2 Sufficient Proceeds: The costs of restoration of the damaged Improvement shall be funded pursuant to the provisions and in the priority established by this Section 5.8.2. A lower priority procedure shall be utilized only if the aggregate amount of funds then available pursuant to the procedures of higher priority are insufficient to Restore the damaged Improvement. The following funds and procedures shall be utilized:

1. The first priority shall be any insurance proceeds paid to the Association under existing insurance policies.

2. The second priority shall be all Reserve Account funds designated for the repair or replacement of the capital Improvement(s) which has been damaged.

3. The third priority shall be funds raised by a Special Assessment against all Owners levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in Section 6.5.

4. The fourth priority shall be any funds raised by a Special Assessment against Owners levied by the Board pursuant to a vote of the Members pursuant to Section 5.8.3.

5.8.3 Additional Special Assessment: If the total funds available to Restore the damaged Improvement pursuant to the first three priorities described in Section 5.8.2 are insufficient to Restore the damaged Improvement, then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. After the vote, the Board shall contract for the restoration of the damaged Improvement as described above, making use of whatever funds are available for that purpose.

5.9 DAMAGE OR DESTRUCTION — OWNERS: If all or any portion of a Lot or Residence is damaged by fire or other casualty and the loss is not covered by an insurance policy held by the Association, the Owner of the Improvement shall either (i) Restore the damaged Improvements or (ii) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration under (i) preceding must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage, unless the Owner complies with the provisions of Article XI. Unless extended by the Board, the Owner must commence such work within one hundred twenty (120) days after the damage occurs and must complete the work within one (1) year thereafter.

5.10 CONDEMNATION OF COMMON AREA: If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds equally to all Owners and shall represent the interests of all Owners.

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ARTICLE VI
FUNDS AND ASSESSMENTS

6.1 COVENANTS TO PAY: Declarant, Builder and each Owner covenant and agree to pay to the Association the assessments and any Additional Charges levied pursuant to this Article VI.

6.1.1 Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record Owner of a Lot shall in turn be liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Owner's Lot from the liens and charges hereof by not using the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Lot at the time when the assessment was levied and shall bind the Owner's heirs, devisees, personal representatives and assigns. Any assessment not paid when due is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to a Lot, the Owner shall not be liable for any charge thereafter levied against that Lot.

6.1.2 Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely to operate and Maintain the Project as provided in this Declaration.

6.1.3 Offsets: No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2 REGULAR ASSESSMENTS:

6.2.1 Payment of Regular Assessments: Regular Assessments for each fiscal year shall be established when the Board approves the Budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis; however, each Owner shall be entitled to pay the Regular Assessment in twelve (12) equal monthly installments, one installment payable on the first day of each calendar month during the fiscal year, as long as the Owner is not delinquent in the payment of any monthly installment. If an Owner fails to pay any monthly installment by the sixtieth (60th) day after the date the installment was due, the Board may terminate that Owner's right to pay the Regular Assessment in monthly installments and declare the then unpaid balance of the Regular Assessment for that year immediately due and payable. Regular Assessments shall commence for all Lots in each Phase on the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner other than a Builder or a Declarant and may commence prior to that date at the option of the Declarant or Builder who owns the Lots.

6.2.2 Allocation of Regular Assessments: The total amount of the Association's anticipated revenue attributable to Regular Assessments as reflected in the Budget for that fiscal year shall be allocated equally among the Lots. After annexation of each Phase, the allocation and assessment of the charges in the Budget shall be reallocated equally among all Lots in the Project, including those in the annexed Additional Property. For the first fiscal year, the Budget shall be substantially based upon the operating budget accepted by the Department of Real Estate of the State of California. After a new Phase has been annexed, the Board shall approve a Budget, which is substantially based upon the operating Budget accepted by the Department of Real Estate of the State of California in connection with the Public Report for that Phase, for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase.

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6.2.3 Exemptions from Regular Assessment: Notwithstanding the provisions of Section 6.2, the Board shall exempt each Owner of a Lot which satisfies paragraph (a), below, and may exempt all Owners if paragraph (b), below, is satisfied, from the payment of a portion of the Regular Assessment levied against that Lot as described in those paragraphs.

(a) Lots: An Owner of a Lot is exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to landscaping situated on Lots for which the Association is responsible until any such landscaping which is to be installed on the Owner's Lot is installed and no one other than the Association has any obligation to Maintain the landscaping.

(b) Other Common Area: Each Owner may be exempted from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the time Regular Assessments commence until the first to occur of the following events: (i) a notice of completion of the common facility is recorded; (ii) the common facility has been placed into use; or (iii) in the case of landscaping, the landscaping is installed and no one other than the Association has any obligation to Maintain the landscaping.

6.2.4 No Waiver of Assessments: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.3 SPECIAL ASSESSMENTS: Subject to the limitations set forth in Section 6.5, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital Improvements, (ii) correcting an inadequacy in the Current Operation Account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Common Area, or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments.

6.4 REIMBURSEMENT ASSESSMENTS: The Association shall levy a Reimbursement Assessment against an Owner to (a) reimburse the Association for costs incurred by the Association in Maintaining an Improvement on behalf of an Owner, (b) to reimburse the Association for the costs of repairing damage caused by that Owner or that Owner's Invitee or (c) if a failure to comply with the Project Documents has resulted in (i) an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Lot or Improvements into compliance or (ii) the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given in accordance with the Bylaws. Reimbursement Assessments may not be enforced by lien.

6.5 LIMITATIONS ON ASSESSMENTS: All Regular and Special Assessments levied by the Board must comply with the provisions of Section 1366 of the California Civil Code, including the written ballot limitations and special voting and quorum requirements.

6.6 ACCOUNTS:

6.6.1 Types of Accounts: Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a responsible financial institution, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of major components which the Association is obligated to Maintain into the Reserve Account.

6.6.2 Reserve Account: Withdrawal of funds from the Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) officer of the Association who is not

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a Director. The Association may expend funds from the Reserve Account only for the purposes set forth in Section 1365.5 of the California Civil Code.

6.6.3 Current Operation Account: All other costs properly payable by the Association shall be paid from the Current Operation Account.

6.7 BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES:

6.7.1 Preparation and Distribution of Budget: The Board shall annually prepare, adopt and distribute a Budget in accordance with the requirements of Section 1365 of the California Civil Code. A summary of the Budget may be distributed in lieu of the entire Budget if the requirements set forth in Section 1365 of the California Civil Code are satisfied.

(a) Drainage Treatment Reimbursement: The budget shall include an amount to pay the Association's pro rata share of the costs incurred by the City in implementing a storm water treatment plan for the Project ("Drainage Treatment Plan.") The Drainage Treatment Plan will be implemented by the City in lieu of the City's requirement that the Association install and maintain fossil filters in all storm drain inlets within the Project. The Association's pro rata share shall initially be an amount equal to Seven and 97/100 Dollars ($7.97) per Lot per month ("Drainage Treatment Reimbursement".) When the Drainage Treatment Plan is completed, the costs to implement it shall be estimated by the City. If the estimated costs are less than the initial Drainage Treatment Reimbursement, the Drainage Treatment Reimbursement shall be reduced. If the estimated costs are greater than the Drainage Treatment Reimbursement, the Drainage Treatment Reimbursement shall not be increased. Thereafter, the Drainage Treatment Reimbursement shall be adjusted annually on the first day of each calendar year, equal to the change in the San Francisco Bay Area Consumer Price Index published by the Bureau of Labor Statistics. The Association shall pay the Drainage Treatment Reimbursement to the City monthly, in arrears.

6.7.2 Annual Report: The Board shall annually prepare and distribute an annual report in accordance with the requirements of Section 1365 of the California Civil Code.

6.7.3 Assessments and Foreclosure: During the sixty (60) day period preceding the beginning of each Association fiscal year, the Association shall prepare and distribute the following notices to Owners by first-class mail:

(a) The notice required by Section 1365.1 of the California Civil Code;

(b) The statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Lots required by Section 1365 of the California Civil Code; and

(c) Notice of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 1366.

6.7.4 Quarterly Reconciliation: If then required by Section 1365 of the California Civil Code, at least quarterly, the Board shall: (i) cause a current reconciliation of the Association's Operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (iii) review the current year's actual reserve revenues and expenses compared to the current year's Budget; (iv) review the most current account statements prepared by the financial institution where the Association has its Operation and Reserve Accounts; and (v) review an income and expense statement for the Association's Operation and Reserve Accounts.

6.7.5 Reserve Account Study: The Board shall (i) cause a study of the Reserve Account to be conducted, (ii) review the study annually and (iii) consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review in compliance with the provisions of California Civil Code Section 1365.5.

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6.7.6 Statement of Outstanding Charges: Within ten (10) days of a written request by an Owner, the Association shall provide a written statement to the Owner which sets forth all information required by California Civil Code Section 1368. A charge for the statement may be made by the Association, not to exceed the reasonable costs of preparation and reproduction of the statement.

6.7.7 Schedule of Monetary Penalties: If the Board adopts a policy imposing any monetary penalty on or charging any fee to any Owner for a violation of the Project Documents by that Owner or that Owner's Invitee, the Board shall adopt a schedule of the monetary penalties that may be assessed for those violations. The penalties must be consistent with the Project Documents. A copy of the schedule shall be personally delivered or mailed by first-class mail, postage prepaid, to each Owner by the Board. Each time the schedule is modified, the Board shall again deliver a copy to each Owner, either personally or by first-class mail, postage prepaid.

6.8 ENFORCEMENT OF ASSESSMENTS: Prior to recording a lien against an Owner's Lot for failure to pay assessments, the Association shall prepare and serve the notice required by and in compliance with the provisions of California Civil Code Section 1367.1.

6.8.1 Procedures: In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit: The Association may commence and prosecute a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be prosecuted in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, and such additional costs, fees, charges and expenditures ("Additional Charges") and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be prosecuted without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien: The Association or a trustee nominated by the Association may commence and prosecute proceedings to establish and/or foreclose assessment liens in accordance with the provisions of California Civil Code Section 1367.1.

6.8.2 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such Additional Charges as the Association may incur or levy in collecting the monies due and delinquent from that Owner. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

(a) Attorneys' Fees: Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Board in accordance with the then current laws of the State of California to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;

(d) Interest: Interest on the delinquent assessment and Additional Charges at a rate fixed by the Board in accordance with the then current laws of the State of California; and

(e) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.8.3 Satisfaction of Lien: All amounts paid by an Owner toward a delinquent assessment shall be credited first to reduce the principal amount of the debt. Within twenty-one (21) days of payment

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or other satisfaction of a delinquent assessment for which a Notice of Delinquent Assessment was recorded pursuant to California Civil Code Section 1367.1(d), the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.8.4 Lien Eliminated By Foreclosure: If the Association has recorded a Notice of Delinquent Assessment and the lien is eliminated as a result of a foreclosure of a Mortgage or a transfer pursuant to the remedies provided in the Mortgage, the new Owner of the Lot shall pay to the Association a pro-rata share of the Regular Assessment for each month remaining in the Association's fiscal year after the date of the foreclosure or transfer pursuant to the remedies provided in the Mortgage.

6.8.5 Waiver of Homestead Protections: Each Owner, does hereby waive, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of California as applied to any action to enforce or collect assessments levied by the Association.

6.9 SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Lot, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Lot after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

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ARTICLE VII
MEMBERSHIP IN AND DUTIES OF THE ASSOCIATION

7.1 THE ORGANIZATION: The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have the powers set forth in the Project Documents.

7.2 MEMBERSHIP: Each Owner (including Declarant for so long as Declarant is an Owner and including Builder for so long as Builder is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

7.2.1 Appurtenant to Ownership: Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall terminate upon termination of Lot ownership. Ownership of a Lot shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot (and then only to the transferee of title to such Lot). Any attempt to make a prohibited transfer is void. Membership shall not be related to the use of the Common Area and may not be renounced. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents.

7.2.2 Annexation: Upon the commencement of Regular Assessments in a subsequent Phase, the Owners of the Lots described in the Declaration of Annexation for that Phase shall become Members.

7.3 VOTING: Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members shall be approved, if at all, in accordance with the procedures set forth in the Bylaws.

7.4 RULES: The Board may propose, adopt, amend and repeal Rules appropriate for the management of the Project, which are consistent with the Project Documents. The Rules may also establish architectural controls and may govern the use of the Common Area by Owners or their Invitees. After adoption, a copy of the Rules shall be furnished to each Owner. Owners shall be responsible for distributing the Rules to their tenants.

7.5 TRANSFERS OF COMMON AREA: Subject to any applicable provision in the Bylaws, the Board shall have the power and right in the name of the Association and all of the Owners as their attorneys-in-fact to grant, convey, dedicate, mortgage, or otherwise transfer to any Owner or other person or entity, fee title, easements, exclusive use easements, security rights or other rights or licenses in, on, over or under the Common Area that, in the sole discretion of the Board, are in the best interests of the Association and its Members. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of that Owner's Lot without the prior written consent of that Owner.

7.6 INSURANCE: The Board shall make every reasonable effort to obtain the insurance policies described in this Section and keep them in full force and effect. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take. The Board shall comply with any resolution concerning insurance coverage adopted at such a meeting.

7.6.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and (i) holding a "B" or better general policyholder's rating and a "6" or better financial performance index rating as established by Best's

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Insurance Reports, (ii) reinsured by a company described in (i), above, or (iii) if such a company is not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(d) Contribution: In no event shall the Association's insurance coverage be brought into contribution with insurance purchased by Owners or their Mortgagees.

(e) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(iii) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(iv) An agreed amount endorsement, if the policy contains a coinsurance clause;

(v) A guaranteed replacement cost or replacement cost endorsement; and

(vi) An inflation guard endorsement.

(f) Term: The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(g) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

7.6.2 Types of Coverage: Unless the Association determines otherwise pursuant to Section 7.6, the Board shall obtain at least the following insurance policies in the amounts specified:

(a) Property Insurance: A Special Form or "All-Risk" policy of property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to the full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of liability insurance in an amount not less than Three Million Dollars ($3,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

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(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) Fidelity Bond: A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount equal to at least one-fourth (¼) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) Directors and Officers: Errors and omissions insurance covering individual liability of Directors and officers for their negligent acts or omissions while acting in their capacities as Directors and officers in an amount equal to at least the minimum amount specified in Section 1365.7(a)(4) of the California Civil Code.

(f) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

(g) Insurance by Owner: Each Owner, at that Owner's sole cost and expense, shall obtain insurance coverage which the Owner considers necessary or desirable to protect that Owner and that Owner's Lot, Residence and personal property; provided, however, that no Owner shall be entitled to procure insurance coverage which decreases the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

7.6.3 Annual Review: The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

7.6.4 Annual Notice to Members: The Association shall provide a summary of the Association's property damage, general liability, earthquake and flood insurance policies as required by Section 1365 of the California Civil Code.

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ARTICLE VIII
DEVELOPMENT RIGHTS

8.1 LIMITATIONS OF RESTRICTIONS: Declarant and Builder are undertaking the work of developing Lots and other Improvements within the Project. The completion of the development and the marketing, sale, lease, rental and/or other disposition of the Lots is essential to the establishment and welfare of the Subject Property and the Additional Property as a residential community. In order that the work may be completed and the Project established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant or any Builder the rights set forth in this Article.

8.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION: Until three (3) years after all of the Additional Property has been annexed to the Project, Declarant, Builder and their respective contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Project and/or do within any Lot owned or controlled by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and (ii) erect, construct and use on the Common Area of the Project and/or within any Lot owned or controlled by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease, rental or otherwise. Each Owner acknowledges that: (a) the construction of the Project may occur over an extended period of time; (b) the Owner's quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other nuisances associated with construction activities; and (c) the nuisances will continue until the completion of the construction of the entire Project.

8.3 SIZE AND APPEARANCE OF PROJECT: Declarant and Builder shall not be prevented from increasing or decreasing the number of Lots that may be annexed to the Project or from changing the exterior appearance of Residences or Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant or Builder, if Declarant or Builder obtains all governmental consents required by law.

8.4 MARKETING RIGHTS: Declarant and Builder shall have the right to: (i) construct, establish and use model homes, signs, banners, flags, inflatable balloons, blimps, sales offices, sales and construction trailers, leasing offices, rental offices, storage areas, parking lots and related facilities in any Lots owned or controlled by Declarant or Builder or Common Area within the Project as are necessary or reasonable, in the opinion of Declarant or Builder, for the sale, lease, rental or other disposition of the Lots; (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Lots; (iii) use any Lots owned or controlled by Declarant or Builder in accordance with any promotional programs established from time to time by Declarant or Builder; and (iv) conduct its business of disposing of Lots by sale, lease, rental or otherwise; provided, however, Declarant or Builder shall pay the Association reasonable rent for the use of any Common Area facilities, if Declarant's or Builder's use of those Common Area facilities materially interferes with the full use and enjoyment of the Common Area facilities by Owners. All signs must comply with all applicable local ordinances and shall be consistent with the Master Sign Program approved by the City in connection with the development of the Project.

8.5 TITLE RIGHTS: This Declaration shall not be construed to constitute a limitation on Declarant's or Builder's title rights to the Additional Property prior to its annexation, nor shall it impose any obligation on Declarant, Builder or any other person or entity to improve, develop or annex any portion of the Additional Property. This Declaration shall not be construed to limit the right of Declarant or Builder at any time prior to such an annexation to establish additional licenses, easements, reservations, restrictions and rights-of-way for itself, utility companies or others as reasonably necessary for the proper development and disposition of property owned by Declarant or Builder.

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ARTICLE IX
RIGHTS OF MORTGAGEES

9.1 CONFLICT: Notwithstanding any contrary provision in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees specified herein.

9.2 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect and copy the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours.

9.3 FINANCIAL STATEMENTS FOR MORTGAGEES: If the Project contains fifty (50) or fewer Lots, any Mortgagee who desires to have an audited financial statement of the Association may cause an audited financial statement to be prepared at the Mortgagee's expense. If an audited financial statement is not available and the Project contains more than fifty (50) Lots, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year. The audited financial statement shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. The Association shall provide a copy of any audited financial statement to any Mortgagee who makes a written request for it.

9.4 MORTGAGE PROTECTION: A breach of any of the conditions or the enforcement of any lien provisions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Project; but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

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ARTICLE X
AMENDMENT AND ENFORCEMENT

10.1 AMENDMENTS:

10.1.1 Approval: Prior to the conveyance of the first Lot to an Owner other than a Declarant or a Builder, any Project Document may be amended by Declarant, with the written consent of Bayport Associates. After the conveyance of the first Lot, the Project Documents may be amended if each of the following requirements is satisfied:

(a) The approval of each class of Members is obtained; provided however, that no provision of this Declaration which provides for a vote of more than fifty-one percent (51%) may be amended by a vote less than the percentage specified in the Section to be amended.

(b) The provisions of Article VIII and this Section 10.1.1(b) may not be amended without the consent of Declarant and Builder until three years (3) after all of the Additional Property has been annexed to the Project.

(c) The provisions of Article XII, Section 11.1.3 and this Section 10.1.1(c) may not be amended without the consent of all Owners of the Additional Property until all of the Additional Property has been annexed to the Project and all of the Lots in the Project owned by Declarant or Builder have been conveyed.

(d) The provisions of Sections 2.19, 2.23 and 4.5, Sections 5.1 through 5.6, inclusive, (and their subsections), Section 6.7.1(a), Section 10.2.2 and this Section 10.1.1(d) may not be amended nor shall other provisions be adopted that purport to supercede them without the written approval of the City.

(e) The provisions of Section 10.3 and this Section 10.1.1(e) may not be amended nor shall other provisions be adopted that purport to supercede them without the consent of Declarant and Builder.

(f) Notwithstanding the provisions of Section 10.1.1(a), Bayport Associates shall have the right to amend this Declaration, without the approval of Declarant, any Builder or any Owner, for any of the following reasons: (i) to comply with City, County, State or Federal laws or regulations, (ii) to correct any typographical or similarly obvious errors, and (iii) to change the provisions of this Declaration which are affected by changes in laws resulting from the adoption of new statutes or the decision of a court.

10.1.2 Restatement: After an amendment is duly approved in accordance with the preceding requirements, the Board may prepare a restatement of the Declaration and record the restatement of the Declaration which restates the entire text of the original document, with these exceptions: (a) changes incorporating all amendments approved by the Owners; (b) changes made to rearrange or delete the text for consistency with the approved amendments; and (c) changes made to delete material no longer legally effective or legally required. Upon recordation of the restatement, the restatement shall supersede the Declaration and all prior amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration, as established by the Declaration's initial date of recordation.

10.1.3 Recordation: Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of either (a) a restatement approved by the Board as provided above which includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the restatement and that the form of the restatement was duly approved by a resolution of the Board, or (b)

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an amending instrument which sets forth the terms of the amendment and includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the amending instrument.

10.2 ENFORCEMENT:

10.2.1 Rights to Enforce: Subject to the provisions of Section 10.3, Declarant, Builder, the Association and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. In addition to instituting appropriate legal action, the Association may temporarily suspend an Owner's use of any recreation facilities or voting rights and/or levy a fine against an Owner in a standard amount to be determined by the Board from time to time. No determination of whether a violation has occurred may be made until Notice and Hearing has been provided to the Owner pursuant to the Bylaws. If legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association has no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot and Residence, including access thereto, due to the Owner's failure to comply with the provisions of the Project Documents unless the loss or forfeiture is the result of an order of a court or an order pursuant to a final and binding arbitration decision. The provisions of this Declaration are equitable servitudes, enforceable by any Owner or the Association against the Association or any other Owner or resident in the Project. Except as otherwise provided, Declarant, Builder, the Association or any Owner(s) has the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project. Neither Declarant nor Builder is obligated to enforce any provision of the Project Documents.

10.2.2 City Rights to Enforce: The Association and Owners recognize that the proper maintenance of the Common Area and public right-of-way(s) are for the benefit of all citizens of the City and that the City is an intended third party beneficiary of the provisions contained in Sections 2.19, 2.23 and 4.5, Sections 5.1 through 5.6, inclusive, (and their subsections), Section 6.7.1(a), Section 10.1.1(d), all provisions of each Declaration of Annexation which impose obligations to Maintain and this Section 10.2.2 . The City may exercise the same powers of enforcement as the Association after satisfying the notice and hearing requirements of this Section 10.2.2. The City's right to enforce maintenance obligations contained in a Declaration of Annexation commences upon recordation of the Declaration of Annexation.

(a) Notice: The City may give written notice to the Association that it has breached a maintenance obligation and require the Association to perform the maintenance. Notice shall be by mail or personal delivery and shall be given to the Association's agent for service of process. If the breach is not remedied within thirty (30) days of the mailing or delivery of such notice, the City shall have standing and the right, but not the obligation, to bring a court action against the Association to enforce the maintenance provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.

(b) Hearing: The Notice may also contain a date for a hearing on the matter before a City employee designated by the City. If the Notice does not contain a date for a hearing, the Association may request that a hearing be held. The hearing shall be held no sooner than fifteen (15) days after mailing by the party who requests the hearing. The thirty (30) day period described in Section 10.2.2(a) shall be tolled until the hearing is held and the City has rendered a decision.

(c) Performing the Maintenance: If the City determines at the hearing that the Association has breached a maintenance obligation, the Association shall have thirty (30) days from the date of the decision to perform the maintenance. If the Association fails to perform the maintenance by the end of the thirty (30) period, the City shall have the right, but not the obligation, to perform the maintenance. The City shall perform the work at the City's standard rates and prices. The City shall

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provide an invoice to the Association for the costs incurred by the City in curing the deficiency. The invoice shall be accompanied by copies of receipts evidencing the actual cost of cure incurred by City. The Association shall reimburse the City for its costs incurred in curing the deficiency within thirty (30) days of receipt. For the purposes of this Section 10.2.2, the question of whether there has been a breach of a maintenance obligation or adequate maintenance shall be determined by the provisions of this Declaration.

(d) Nothing contained in this Section 10.2.2 shall limit any other right or remedy which the City may have under its ordinances or state law.

10.2.3 Violation of Law: The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which creates a nuisance to the other Owners in the Project or to the Association, in the same manner as a violation of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, as long as the Association complies with the Notice and Hearing requirements.

10.2.4 Remedies Cumulative: Each remedy provided in this Declaration is cumulative and not exclusive.

10.2.5 No Waiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration will not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

10.3 DISPUTES INVOLVING DECLARANT OR BUILDER: Any disputes, claims, issues or controversies between (a) an Owner and Declarant, (b) an Owner and Builder, (c) the Association and Declarant or (d) the Association and Builder regarding any matters that arise from or are in any way related to the Project, the relationship between the Owner and Declarant or the Owner and Builder, whether contractual or tort, including, but not limited to, the purchase, sale, condition, design, construction or materials used in construction of any portion of the Project, the agreement between an Owner and Declarant or an Owner and Builder to purchase a Lot or any related agreement, or a deficiency as that term is defined in Section 896 of the California Civil Code shall be resolved in accordance with the provisions of the applicable Title 7 Master Declaration.

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ARTICLE XI
ARCHITECTURAL AND LANDSCAPING CONTROL

11.1 APPLICABILITY:

11.1.1 Generally: Except as otherwise provided in this Declaration, proposals for Alterations (which includes all landscaping) are subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article.

11.1.2 Exceptions: The provisions of this Declaration requiring architectural approvals do not apply to repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade or repairing or replacing any Improvement with the same materials or to the original construction of any Improvements on a Lot by any Owner who is required to and does obtain architectural approval from Declarant pursuant to a separate contract between Declarant and Owner or Builder and Owner. The Architectural Standards may establish exceptions from time to time.

11.1.3 Exemptions: The provisions of this Declaration requiring architectural approvals do not apply to the original construction of any Improvements on a Lot by Declarant, Builder or their respective agents, contractors or employees.

11.1.4 Relationship to Governmental Approvals: Proposals for Alterations may also be subject to review and approval by state or local governmental entities or agencies. Satisfying the provisions of this Declaration does not automatically satisfy any requirement for governmental approval, permitting or inspection. All approvals, permits and inspections which are required under local, state or federal law for any proposed Alteration are the responsibility of the Owner and must be obtained by the Owner in addition to the approvals required by this Declaration.

11.2 RESERVATION TO BAYPORT ASSOCIATES: Notwithstanding the power of the Board to appoint committees, Declarant hereby grants to Bayport Associates the right to appoint an Architectural Committee in accordance with the provisions of this Article. When there is no longer any Member appointed by Bayport Associates on the Committee, the Board may decide to dissolve the Committee and undertake the Committee's responsibilities.

11.3 MEMBERS: The Architectural Committee ("Committee") shall consist of a chairman and two (2) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by Bayport Associates need not be Members of the Association. All members will serve until the expiration of the term for which they were appointed, if specified by the Board, or until they resign or are replaced. Bayport Associates may appoint a majority of the members of the Committee and their replacements until the conveyance of the 362nd Lot to a Class A Owner Member or the fourth (4th) anniversary following the most recent conveyance to a Class A Owner Member of the first Lot in any Phase, whichever occurs first. Thereafter, the Board shall appoint all of the members of the Committee or dissolve the Committee as provided in Section 11.2, above. After all of the Additional Property has been annexed and one hundred percent (100%) of all Lots has been conveyed, the term of any remaining members appointed by Bayport Associates will terminate and replacement members shall be appointed by the Board. The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Bayport Associates may appoint a replacement for any member of the Committee originally appointed by Bayport Associates who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as required by this Section. If Bayport Associates fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

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11.4 DUTIES AND POWERS:

11.4.1 Duties: The Committee shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed Improvements.

11.4.2 Architectural Standards: The Committee shall adopt architectural rules, regulations and guidelines ("Architectural Standards") which shall include conceptual landscape plans for each residential floor plan. The Committee may adopt additional or modify existing Architectural Standards, from time to time and in its sole discretion; provided however, the conceptual landscape plans may not be modified without the prior consent of the City. The Architectural Standards may also impose specific requirements on individual Lots if those requirements are reasonable in light of specific Lot topography, visibility or other factors. The Architectural Standards will be effective when they are adopted by the Committee. The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, fences, and similar features which may be used in the Project; provided, however, that the Architectural Standards may not be in derogation of the minimum standards established by this Declaration. The Architectural Standards may include a schedule of fees for processing submittals (which shall not exceed the amount necessary to defray all costs incurred by the Committee in processing the submittals) and establish the time and manner in which such fees will be paid. The Architectural Standards will constitute Rules.

11.4.3 Powers: The Committee may adopt rules and regulations for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Committee may also adopt criteria, consistent with the purpose and intent of this Declaration to be used in making its determination to approve, conditionally approve or deny any matter submitted to it for decision.

11.4.4 Consultants: With the consent of the Board, the Committee may hire and the Association shall pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its duties.

11.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, except Declarant, Builder and their respective designated agents, who wants to perform any Alteration for which approval is required shall notify the Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Committee.

11.6 BASIS FOR APPROVAL OF IMPROVEMENTS: As conditions precedent to approval of any matter submitted to it, the Committee must ordinarily be able to find that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted, (ii) the proposed Alteration will be aesthetically consistent with the other Improvements in the Project as to harmony of exterior design, landscaping, color schemes, exterior finishes, visibility with respect to existing structures and environment, and placement of structures with respect to topography and finished grade elevation and (iii) in the case of landscaping within unenclosed portions of Lots, that the minimum standards in the Architectural Standards have been met.

11.7 FORM OF APPROVALS, CONDITIONAL APPROVALS AND DENIALS: All approvals, conditional approvals and denials must be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within sixty (60) days from the date of submission will be deemed approved.

11.8 WORK: Upon approval of the Committee, the Owner must diligently proceed with the commencement and completion of all work so approved. Completion of the work approved must occur within one (1) year following the approval of the work unless the Architectural Committee grants an extension. This Section shall not be interpreted to extend any other time period imposed by this

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Declaration. If the Owner fails to complete the work within the required time period, the Committee may notify the Owner in writing of the non-compliance and proceed in accordance with the provisions of Section 11.10, below.

11.9 DETERMINATION OF COMPLIANCE: Any work performed, whether or not the Owner obtained proper approvals, may be inspected and a determination of compliance made as follows:

11.9.1 Notice of Completion: Upon the completion of any work performed by an Owner for which approval was required, the Owner must give written notice of completion to the Committee.

11.9.2 Inspection: Within sixty (60) days after the Committee's receipt of the Owner's notice of completion, or, if the Owner fails to give a written notice of completion to the Committee within the completion period specified in Section 11.8, above, a designee of the Committee may inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Committee finds that the work was not performed or completed in substantial compliance with the approval granted or if the Committee finds that the approval required was not obtained, the Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and require the Owner to remedy the non-compliance.

11.10 FAILURE TO REMEDY THE NON-COMPLIANCE: If the Committee has determined that an Owner has not constructed an Improvement consistently with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

11.11 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

11.12 APPEAL OF DECISION OF COMMITTEE: This Section does not apply if the Board has dissolved the Committee or during the period of time that a majority of the Members of the Architectural Committee have been appointed by Bayport Associates. If the Owner who applied or who the Committee determined should have applied for approval of an Alteration on a Lot or Residence disputes the jurisdiction or powers of the Committee or any requirement, rule, regulation or decision of the Committee applicable to the denial or conditional approval of the Owner's application (collectively referred to as "decision"), that Owner may appeal such decision to the Board. The Board shall notify the Owner of the time, date and place of a hearing to review the decision of the Committee. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner's Lot if no other address has been provided. After the hearing has taken place, the Board shall notify the Owner of its decision. The decision shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

11.13 NO LIABILITY: If members of the Architectural Committee have acted in good faith, neither the Committee nor any member will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and

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specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

11.14 EVIDENCE OF APPROVAL OR DISAPPROVAL: After a determination of compliance is made pursuant to Section 11.9, the Board may issue a written Notice of Architectural Determination. The Notice of Architectural Determination must be executed by any two (2) Directors and shall certify that as of the date of the Notice either (i) the work completed complies with the provisions of this Declaration and the approval(s) issued by the Architectural Committee ("Notice of Approval") or (ii) the work completed does not comply with the provisions of this Declaration or the approval(s) issued by the Architectural Committee ("Notice of Disapproval"). A Notice of Disapproval must also identify the particulars of the non-compliance. Any successor in interest of the Owner will be entitled to rely on a Notice of Architectural Determination with respect to the matters set forth. Each Owner must disclose to the Owner's subsequent purchaser any Notice of Disapproval unless the Owner has a subsequently issued Notice of Approval which covers the same Alteration. The Notice of Architectural Determination will be conclusive as between the Association, the Architectural Committee, Declarant, Builder and all Owners and such persons deriving any interest through any of them. Any Owner may make a written request that the Board prepare and execute a Notice of Architectural Determination, and the Board must do so within sixty (60) days of its receipt of the request.

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ARTICLE XII
ANNEXATION

12.1 PROPERTY WHICH MAY BE ANNEXED: Property may be added to the Project by annexation only in accordance with the provisions of this Article.

12.1.1 Additional Property: All or any portion of the Additional Property may be added to the Project as one or more subsequent Phases without the approval of the Association, Declarant, Builder or any Owner if the annexation of the Phase is in substantial conformance with a plan of phased development approved by the Department of Real Estate of the State of California. The issuance of a Public Report for a Phase by the Department of Real Estate of the State of California shall be evidence that the annexation of that Phase was in substantial conformance with a plan of phased development.

12.1.2 Other Property: Property other than the Additional Property may be annexed to the Project only with the approval of two-thirds (2/3) of each class of Members.

12.2 PROCEDURE FOR ANNEXATION: In addition to any required approval by Members, a final subdivision map(s) or final parcel map(s) and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation must: (i) describe the portion of the Additional Property to be annexed; (ii) describe any Common Area within the Additional Property to be annexed; (iii) set forth the ownership of any such Common Area; and (iv) specify that all of the covenants, conditions and restrictions of this Declaration will apply to the annexed Additional Property in the same manner as if it were originally covered by this Declaration. The Declaration of Annexation must also provide that if and only if, at the time of the first conveyance of a Lot in a Phase, Lots in that Phase have been rented or leased for a period of at least one (1) year after the most recent review of a budget for that Phase by the Department of Real Estate, the Owner of the rented or leased Lots shall pay to the Association the following amount: an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in that Phase and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements had Regular Assessments in that Phase commenced at the time of the most recent review of a budget for that Phase. Such amount, if any, must be paid to the Association prior to or concurrently with the first conveyance of a Lot in that Phase. The Declaration of Annexation may also (i) impose any additional covenants, conditions and restrictions on the Additional Property that are necessary to include the property in the Project and to reflect differences in nature, if any, of the Improvements to be constructed on the Additional Property and (ii) provide for a specified date on which assessments will commence for Lots in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner. No Declaration of Annexation may diminish the covenants, conditions or restrictions established by this Declaration or discriminate between the Owners in the Project. No Declaration of Annexation may alter or change the general common plan or scheme created by this Declaration or affect the provisions hereof as covenants running with the land or as equitable servitudes.

12.3 EFFECT OF ANNEXATION: After complying with the procedures for annexation and upon the commencement of assessments for Lots in the annexed Phase, Owners of Lots in the annexed Phase will be Members, will be subject to this Declaration and will be entitled to use all Common Area in the Project. The Association must reallocate the Regular Assessments so as to assess each Owner of a Lot in the Project for a proportionate share of the total expenses of the Project.

12.4 DEANNEXATION AND AMENDMENT: The person(s) or entity(s) who holds title to all of the property annexed by a Declaration of Annexation have the right, at their sole option, to (i) amend the Declaration of Annexation by executing and recording an amendment of the Declaration of Annexation provided that the amendment is consistent with this Article, or (ii) remove from the Project any property described in the Declaration of Annexation for a Phase by executing and recording a rescission of the

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Declaration of Annexation, as long as assessments have not commenced for any Lot in the annexed property. Any deannexation must also be approved by the City.

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ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.1 BINDING: This Declaration is for the benefit of and binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

13.2 BONDED OBLIGATIONS: When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the obligor under the Bond ("Obligor") to complete the Improvements, the following provisions apply.

13.2.1 Improvements Complete: If all Improvements in the planned construction statement appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute whatever documents are required by the surety to release the Bond.

13.2.2 Improvements Not Complete: If a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

13.2.3 Action by Members: If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members entitled to cast five percent (5%) or more of the total number of votes which may be cast by the Members, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the approval of the Members to take action to enforce the obligations under the Bond, excluding the vote of the Obligor, shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

13.2.4 Release of Bond: On satisfaction of the Obligor's obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be reasonably necessary to effect the release of the Bond. The Association may not condition its approval on the satisfaction of any condition other than completion of the Common Area Improvements. If the Association breaches any of the foregoing obligations, it will be liable to the Obligor for any damages incurred thereby, including reasonable attorneys' fees. Any dispute between the Obligor and the Association regarding the completion of Common Area Improvements shall be resolved in accordance with the provisions of the escrow instructions which accompany the Bond.

13.3 CONFLICT: To the extent there are inconsistencies or conflicts between the Title 7 Master Declaration and this Declaration, the provisions of the Title 7 Master Declaration shall supercede the inconsistent or conflicting provisions of this Declaration with respect to the real property subject to both documents and the provisions of the Title 7 Master Declaration shall prevail. To the extent there are inconsistencies or conflicts between this Declaration and a Title 7 Individual Agreement, the provisions of the Title 7 Individual Agreement shall supercede inconsistent or conflicting provisions of this

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Declaration with respect to the real property described in the Title 7 Individual Agreement, and the provisions of the Title 7 Individual Agreement shall prevail. To the extent there are conflicts or inconsistencies between the Maintenance Manual and this Declaration, the provision which requires the highest standard of Maintenance shall prevail. In the event of any conflicts or inconsistencies between this Declaration and the Bylaws or the Rules, this Declaration shall prevail.

13.4 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration are to be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a planned development pursuant to the provisions of the Davis-Stirling Common Interest Development Act, Section 1350 et seq. of the California Civil Code.

13.5 DOCUMENTS TO BE GIVEN TO PURCHASERS: As soon as practical before transferring title to the Lot, the Owner shall give to the purchaser copies of all documents and statements required by California Civil Code Section 1368.

13.6 EXHIBITS: All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

13.7 GENDER, NUMBER AND CAPTIONS: As used herein, the singular includes the plural and masculine pronouns include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

13.8 REQUIRED ACTIONS OF ASSOCIATION: The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this Declaration or to otherwise carry out the intent of this Declaration.

13.9 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision will not affect the validity or enforceability of any other provision hereof.

13.10 SUCCESSOR STATUTES: Any reference in the Project Documents to a statute will be deemed a reference to any amended or successor statute.

13.11 TERM OF DECLARATION: This Declaration will continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration will be automatically extended for successive periods of ten (10) years until two-thirds (2/3) of the Owners approve a termination of this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the _____ day of June, 2003.

DECLARANT:

CATELLUS RESIDENTIAL GROUP, INC., a California corporation

By: _____
Name: Tom Marshall
Title: Senior Vice President

LITTLE & SAPUTO
ATTORNEYS AT LAW
1901 OLYMPIC BOULEVARD, #100
WALNUT CREEK, CA 94596-5024
(925) 944-5000

STATE OF CALIFORNIA
COUNTY OF ORANGE } ss.

On June 19, 2003, before me, GAIL CHAPMAN "Notary Public",
personally appeared TOM MARSHALL,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

GAIL CHAPMAN
Commission # 1250888
Notary Public - California
Orange County
My Comm. Expires Jan 22, 2004

Gail Chapman
Notary Public

LITTLE & SAPUTO
ATTORNEYS AT LAW
1901 OLYMPIC BOULEVARD, #100
WALNUT CREEK, CA 94596-5024
(925) 944-5000

ILLEGIBLE NOTARY SEAL DECLARATION (CODE 27361.7)

I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

Name of Notary: **Gail Chapman**

Date Commission Expires: **Jan 22, 2004**

Commission Number: **1250888**

State: **CA** County: **Orange**

Place of Execution of this Declaration:
City of Pleasanton, Alameda County, California

Date: **June 25, 2003**

Signature: Diane E Burton
Agent for: First American Title Guaranty Company

EXHIBIT "A"

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

PARCEL ONE:

Lots 1 through 154, inclusive, and Lettered Lots A (Glenview Street), B (Kinkaid Square),C, D (Bryant Avenue), E, F (Schroeder Lane), G, H (Hatfield Lane), I (Hollister Avenue), J (Emeric Lane), K, L (Emeric Lane), M, N (Dufour Lane), O (Bryant Avenue), P (Gilman Lane), Q (Hollister Avenue), R (Decatur Lane), S, T (Austin Street), U (Pomeroy Lane), V (Bryant Avenue), W (Seagull Lane), X (Hollister Avenue), Y (Decatur Lane), Z, AA (Pelican Court), BB (Cormorant Lane), CC (Jack London Avenue), DD, EE (Pickrell Square), FF (Siegfried Lane), GG (Fulton Lane), TT (Kinkaid Court) and those areas shown as Jack London Avenue, Coral Sea Street, Mosley Avenue and Neptune Gardens Avenue, Tract 7387, filed June 24, 2003, Map Book 271, Pages 1, to 34, inclusive, Alameda County Records.

A.P. No. 074-0905-007-01 (portion)
074-0905-008-02 (portion)

PARCEL TWO:

A parcel of land being a portion of the former Alameda Naval Air Station, Alameda, California, lying in the City and County of Alameda, State of California, and being a portion of the parcels described in (1) that certain deed recorded April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records; (2) that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at Page 339, Alameda County Records; (3) that certain deed recorded on June 18, 1963 in Book 924 of Official Records at Page 879, Alameda County Records; and (4) that certain deed recorded on March 28, 1941 in Book 4023 of Official Records at Page 499, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the southwest corner of the parcel described in said reference (4) above with the northerly line of Atlantic Avenue, 51 feet wide, as described in that certain deed recorded on April 18, 1930 in Book 2485 of Official Records at Page 103, Alameda County Records, and with the easterly right of way line of Main Street, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed on August 13, 1951 in Book 3 of Records of Survey at Pages 16 through 22 inclusive, in the Office of the Recorder of Alameda County;

Thence along said easterly right of way and westerly line of last said parcel (reference (4) above), North 00° 34' 11" East 438.56 feet to the TRUE POINT OF BEGINNING;

Thence continuing along last said lines and along the westerly lines of said parcel described in references (3) and (2) above, North 00° 34' 11" East, 1278.33 feet;

Thence leaving last said lines, South 87° 57' 28" East, 97.59 feet to the beginning of a curve to the left;

Thence along said curve having a radius of 1089.00 feet, through a central angle of 09° 23' 29", for an arc length of 163.91 feet;

Thence South 87° 57' 28" East, 286.95 feet to the beginning of a curve to the right;

Thence along said curve having a radius of 20.00 feet, through a central angle of 90° 00' 00", for an arc length of 31.42 feet;

Thence South 87° 57' 28" East, 66.00 feet to the beginning of a non tangent curve to the right from which point a radial line bears South 87° 57' 28" East;

Thence northerly, northeasterly and easterly along last said curve having a radius of 20.00 feet, through a central angle of 90° 00' 00", for an arc length of 31.42 feet;

Thence South 87° 57' 28" East, 1143.31 feet to the beginning of a curve to the right;

Thence along last said curve having a radius of 20.00 feet, through a central angle of 90° 02' 08", for an arc length of 31.43 feet;

Thence South 87° 55' 20" East, 66.00 feet;

Thence North 02° 04' 40" East, 8.93 feet to the beginning of a curve to the right;

Thence along last said curve having a radius of 20.00 feet, through a central angle of 80° 10' 36", for an arc length of 27.99 feet to a reverse curve to the left;

Thence easterly along last said curve having a radius of 589.00 feet, through a central angle of 03° 58' 28", for an arc length of 40.86 feet;

Thence North 78° 16' 48" East, 236.45 feet to the beginning of a curve to the right;

Thence along last said curve having a radius of 1261.00 feet, through central angle of 13° 32' 12", for an arc length of 297.92 feet to a compound curve to the right;

Thence easterly, southeasterly and southerly along last said curve having a radius of 20.00 feet, through a central angle of 90° 58' 17", for an arc length of 31.76 feet;

Thence South 02° 47' 17" West, 136.01 feet to the beginning of a curve to the right;

Thence along last said curve having a radius of 463.00 feet, through a central angle of 26° 07' 11", for an arc length of 211.07 feet;

Thence North 87° 55' 20" West, 324.80 feet;

Thence South 02° 04' 40" West, 529.88 feet to the beginning of a curve to the left;

Thence along last said curve having a radius of 20.00 feet, through a central angle of 90° 00' 00", for an arc length of 31.42 feet to a point of cusp;

Thence North 87° 55' 20" West, 250.26 feet to the beginning of a non tangent curve to the left, from which point a radial line bears South 65° 35' 38" West;

Thence northwesterly and westerly along last said curve having a radius of 74.00 feet, through a central angle of 72° 57' 19", for an arc length of 94.22 feet to the beginning of a non tangent curve to the left, from which point a radial line bears North 73° 59' 57" West;

Thence northerly along last said curve having a radius of 600.00 feet, through a central angle of 13° 10' 02", for an arc length of 137.89 feet;

Thence North 87° 55' 20" West, 1183.22 feet;

Thence South 02° 04' 40" West, 110.08 feet to the beginning of a curve to the left;

Thence along last said curve having a radius of 600.00 feet, through a central angle of 02° 59' 53", for an arc length of 31.40 feet to the beginning of a non tangent curve to the right, from which point a radial line bears South 22° 00' 34" West;

Thence southeasterly, southerly and southwesterly along last said curve having a radius of 75.00 feet, through a central angle of 121° 36' 41", for an arc length of 159.19 feet to the beginning of a non tangent curve to the left from which point a radial line bears North 76° 33' 01" East;

Thence southerly along last said curve having a radius of 600.00 feet, through a central angle of 01° 50' 50", for an arc length of 19.34 feet;

Thence South 15° 17' 49" East, 156.88 feet;

Thence North 87° 55' 20" West, 69.16 feet;

Thence South 15° 17' 49" East, 104.29 feet to the beginning of a curve to the right;

Thence along said curve having a radius of 597.00 feet, through a central angle of 14° 13' 28", for an arc length of 148.21 feet;

Thence North 87° 55' 20" West, 840.36 feet to the TRUE POINT OF BEGINNING.

A.P.Nos.: 074-0905-007-01 (portion)
074-0905-007-03 (portion)
074-0905-008-02 (portion)
074-0905-009-03 (portion)

ATTACHMENT I

RESPONSES TO REVIEW COMMENTS

DRAFT AND DRAFT FINAL

STATUTORY FIVE-YEAR REVIEW REPORT

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

RESPONSES TO REVIEW COMMENTS

Dated October and November 2005

Received from:

DTSC
USEPA
City of Alameda

On

DRAFT

STATUTORY FIVE-YEAR REVIEW REPORT

Dated August 2005

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
INSTALLATION RESTORATION (IR) SITE 02 at
Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex; and for
MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
ALAMEDA, CALIFORNIA

Final Comments dated October 27, 2005; Received October 27, 2005; Navy Response date: January 18, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
	General Comments	
1	*Decision Documents: Please specify that the IR02 Five-Year Review Report evaluates the remedies as selected in the IR02 Remedial Action Plan/Record of Decision (RAP/ROD) which was approved by DTSC on June 26, 2001. Similarly, please specify that the Marsh Crust Five-Year Review Report evaluates the remedies as selected in the Marsh Crust RAP/ROD which was approved by DTSC on February 2, 2001. Please include this information prominently in the first paragraph of the executive summaries, introductory sections, fact sheet, and the newspaper public notice.* *When referencing the decision document for either IR02 or the marsh crust, please refer the decision document accurately as the "RAP/ROD" instead of "ROD."*	***Statements as suggested in this comment will be added to the executive summaries and introductory sections of both five-year review reports, the fact sheet and the public notice. The reference to the decision document will be 'RAP/ROD'.***
2	*Site Name: The Five-Year Review Reports, fact sheet, newspaper public notice, and transmittal letter use various names, acronyms, and abbreviations for the subject site. DTSC continues to discourage such inconsistent site identification, and requests the Navy to use a single site name and abbreviation for the site. The accurate site name is the "Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex." The acceptable abbreviation for this site is "FISCA."*	***The site name suggested in this comment will be used in the five-year review documents.***

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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
3	*The Navy's Five-Year Review Policy: The reports state that the Navy and Marine Corps policy dated May 21, 2004 was used in conducting the review. DTSC was able to obtain the Navy's November 29, 2001 policy but not the revised May 21, 2004 policy. Please provide DTSC the revised policy.*	***The Navy will transmit a copy of the May 21, 2004 version of the Navy/Marine Corps Five-Year Review Policy to the DTSC under separate cover.***
4	*Interim Covenant: DTSC and the Navy executed the "Interim Covenant to Restrict Use of Property, Environmental Restriction" (Interim Covenant) on July 17, 2000 and recorded the Interim Covenant with the Alameda County Assessor's Office on July 20, 2000. Section 4.01 of the Interim Covenant states that Area 1 (i.e., 10.65543 acres of IR02) shall not be used for residential purposes and construction activities shall not begin until DTSC determines that the soils having PCB and cadmium concentrations have been properly remediated and DTSC has recorded a release terminating these Interim Restrictions for Area 1.* *On February 27, 2004, DTSC issued a letter stating that no further physical action is necessary to remediate PCB and cadmium in the soil at IR02. The letter also indicates that final decision on residential use in the western one-third of IR02 would depend on the results of the ongoing groundwater investigation, and adequate remediation of the benzene plume. The letter concludes that DTSC would record a release of the existing land use restriction if residential land use at the western one-third of IR02 is appropriate.* *Because the benzene/naphthalene plume is located at IR02 and adjacent areas, DTSC has not released the Interim Covenant to allow residential land use. The land use restrictions in all IR02 areas remain effective. Please revise the IR02 Five-Year Review Report, fact sheet, newspaper public notice, and various summary forms/documents to present accurate land use restrictions pursuant to the Interim Covenant.*	***The five-year review for Site IR02 evaluated whether the shallow soil remedy implemented at this site remained protective of human health and the environment at Site IR02 as intended by the decision documents (RAP/ROD). In this case, the selected remedy was to remove soils containing PCBs and cadmium at concentrations exceeding cleanup levels in the shallow soils of this site. The documents reviewed for this five-year review contain data and information as well as regulatory acceptance that this specific remedy has been implemented as intended. In its letter to the Navy dated February 27, 2004, DTSC has stated that 'All confirmation samples collected after the final excavation show PCB and cadmium concentrations less than the cleanup levels. DTSC hereby determines that the soil remediation at IR02 is complete. No further physical action is necessary to remediate PCB and cadmium in the soil at IR02'.*** ***Please note that this five-year review for Site IR02 did not include evaluations of environmental issues other than shallow soils contaminated with PCBs and cadmium, and remediation of these soils as intended in decision documents.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
5	*Further Statutory Five-Year Reviews: The Navy plans to prepare the Land Use Control Remedial Design to recommend whether future five-year reviews would be necessary for either IR02 or the marsh crust and former subtidal area. Please note that statutory five-year reviews at a site can only be terminated when all hazardous substances, pollutants, or contaminants have been removed or remediated and the residual chemical concentrations are at levels suitable for unrestricted use.* *It appears that statutory five-year reviews for the marsh crust and the eastern two-third of IR02 would continue into perpetuity, unless additional remediation is implemented to render the site suitable for unrestricted use. For the western one-third of IR02, statutory five-year review may be terminated as soon as the groundwater contamination no longer poses a threat to human health and the environment.*	***Comment noted.***
6	*Base Closure Dates: Please provide the actual base closure dates for FISCA and the Alameda Naval Air Station, instead of just the months and years.*	***The following base closure dates will be added to the five-year review reports:*** ***FISCA: September 30, 1998*** ***Alameda NAS: April 30, 1997***

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Number	Comment	Response
7	*Applicable or Relevant and Appropriate Requirements (ARARs): DTSC has adopted regulations to establish a clear and consistent standard for remedies where hazardous wastes or constituents, or hazardous substances are left in place at levels not suitable for unrestricted use of the land. DTSC's Land Use Covenants Regulations, effective April 19, 2003, have added section 67391.1 to title 22, division 4.5, chapter 39, California Code of Regulations (CCR). The Land Use Covenants Regulations are ARARs. Please revise both Five-Year Review Reports to document the new ARARs.*	***Cal. Code Regs. (CCR) title 22, §67391.1 regulations referred to in the comment were reviewed and evaluated for potential ARAR status. They were promulgated after the issuance of the two RAP/RODs addressed in the draft five-year review report and were based upon statutory authorities set forth in the California Health and Safety Code and Civil Code (Section 1471). The substantive provisions of those statutory authorities were identified as State ARARs in the two RAP/RODs addressed in the five-year review report and also provided the legal basis for the deed restrictions and Land Use Covenants entered into with DTSC at FISCA and the East Housing Parcel in 2000.*** ***The NCP at 40 CFR Section 300.430lf)(1)(ii)(B)(1) provides that requirements (ARARs) that are promulgated <u>after ROD signature</u> must be attained or waived only when determined to be applicable or relevant and appropriate <u>and necessary to ensure that the remedy is protective of human health and the environment</u>. Although it does not appear that these post-ROD regulations include any "new" substantive requirements that are necessary to protect human health and the environment and that were not already covered by the underlying statutory ARARs identified as described above, the Navy is nonetheless willing to agree to accept the substantive provisions of the regulations as "relevant and appropriate" State ARARs. The text of Section 67391.1 is appended to these responses for reference.***

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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
8	*Implementation and Enforcement Plan: Since the requirements of 22 CCR 67391.1 are ARARs, DTSC requires an Implementation and Enforcement Plan, instead of a Land Use Control Remedial Design, for the Marsh Crust Covenant. DTSC will require an Implementation and Enforcement Plan when DTSC selects the institutional controls remedy in the Basewide RAP/ROD. Hence, a Land Use Control Remedial Design for IR02 is not necessary. DTSC also requires the Navy or other responsible parties to establish financial mechanism to fund DTSC's long-term costs associated with the administration of the Implementation and Enforcement Plan.*	***The Navy will prepare and submit a Land Use Control Remedial Design (LUC RD) report as provided in the "Navy Principles" cited below. That document is the equivalent of the "Implementation and Enforcement Plan" and will address substantive requirements of Cal. Code Regs. title 22, §67391.1 as ARARs. DTSC has accepted this approach in recent MCAS El Toro and MCAS Tustin RODs.*** ***The Navy acknowledges that Subsection 67391.1(h) of the regulations provides: "The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls." The Navy does not agree that the provisions of this subsection are substantive ARARs.*** **"Principles and Procedures for Specifying, Monitoring, and Enforcement of Land-Use Controls and Other Post-ROD Actions".**
9	*Technical Assessment Question C: The IR02 Five-Year Review Report asks whether any other information has come to light that could call into question the protectiveness of the remedy. The report's response is negative, but DTSC disagrees. The discovery and confirmation of the benzene/naphthalene plume at IR02 and adjacent areas have prompted the Navy to propose remedial action for such groundwater contamination. One of the proposed treatment zones is adjacent to the western one-third of IR02 and the second proposed treatment zone is located at the eastern two-third of IR02. Consequently, DTSC is unable to release the Interim Covenant to allow unrestricted land use at the western one-third of IR02 until the groundwater contamination no longer poses a threat to human health and the environment. Please revise the IR02 Five-Year Review Report to document DTSC's position.*	***The remedy implemented pursuant to the RAP/ROD for Site IR02 – removal of shallow soils containing PCBs and cadmium exceeding cleanup levels – was the subject of this five-year review of Site IR02. The five-year review focused on the specific scope of the RAP/ROD and did not address the broader question of whether or not additional remediation may be required to address hazardous substances outside of the scope of the RAP/ROD and remedial action. All documents and data reviewed has supported the finding that this remedy has been implemented as intended by decision documents and it is currently performing as intended, and has been accepted as complete by the DTSC in its letter dated February 17, 2004 (please refer to response to Comment #4 above).***

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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
10	*Marsh Crust Covenant: DTSC and the City of Alameda executed the "Covenant to Restrict Use of Property, Environmental Restrictions" (Marsh Crust Covenant) on July 14, 2000 and recorded the Marsh Crust Covenant with the Alameda County Assessor's Office on July 20, 2000. Section 3.1 of the Marsh Crust Covenant prohibits excavation below the threshold depth without a City of Alameda excavation permit. Section 2.3 of the Marsh Crust Covenant requires that the restrictions be incorporated by reference in each and all deeds, leases and subleases of any portion of the property, which include all areas of FISCA and the former Alameda Naval Air Station East House Area.* *The former East Housing Area is currently being constructed as the Bayport residential development. One of the five-year review activities should examine whether an individual Bayport home deed contains the marsh crust restrictions, notifications, and/or appropriate references. The Marsh Crust Five-Year Review Report should evaluate the effectiveness and of such requirement. DTSC requests the Marsh Crust Five-Year Review Report include an executed deed of a Bayport home to illustrate compliance.*	***Navy agrees that a copy of a Bayport home deed containing marsh crust restrictions would be an effective means of illustrating compliance. As such, Navy is securing a copy of homeowner deed of trust at the Bayport Development formerly known as the East Housing Area. Based on our conversation with the developer of Bayport, environmental disclosures are attached to the deed including the restrictions on the marsh crust. A copy of the deed and restrictions attached to it will be included in the next submittal of this five-year review report.***
11	*Technical Assessment Question B: The Marsh Crust Five-Year Review Report asks whether the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives used at the time of remedy selection still valid. The report's response is affirmative, but DTSC disagrees. On April 19, 2002, the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment listed naphthalene as a chemical known to the State of California to cause cancer, and later adopted a unit risk value of 3.4E-5 ($\mu g/m^3$)-1 and a slope factor of 1.2E-1 (mg/kg-day)-1 for naphthalene. The Marsh Crust Five-Year Review Report should conclude that residual naphthalene concentrations at FISCA and the former East Housing Area would impact the effectiveness of the Marsh Crust Covenant until further studies show otherwise.*	***Naphthalene is not a factor in the calculation of B(a)PE values. The threshold depths were derived based on depths to the marsh crust and not on B(a)PE values.***

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Number	Comment	Response
11 ***(continued)***	*With naphthalene's new slope factor and unit risk, all benzo(a)pyrene equivalent values previously computed at all FISCA and former East Housing Area locations must be recalculated. DTSC specifically requests the Navy to determine whether such recalculated benzo(a)pyrene equivalent values would alter the threshold depths.*	

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Number	Comment	Response
12	*Threshold Depths: The figure attached with the City of Alameda's Ordinance Number 2824 shows the threshold depths (in feet below ground surface) beyond which an excavation permit is required. The figure identifies areas with threshold depths of 15, 10, and 5 feet below ground surface. The figure also depicts areas where a permit would apply for excavation deeper than the mean higher high tide. Most of the Bayport homes are located in areas with the threshold depth of mean higher high tide.* *The U.S. Geological Survey defines "mean higher high tide" as the average height of the higher of two unequal daily high tides over 19 years. DTSC believes the term "mean higher high tide" is confusing to the general public. Landowners and occupants at properties identified with threshold depth of mean higher high tide would have difficulties in discerning whether Ordinance Number 2824 applies.* *Since the threshold depth of mean higher high tide does not change with time, the City of Alameda should amend the Ordinance Number 2824 figure to specify the actual depth below the current ground surface beyond which an excavation permit is required. To account for future land alteration, the Ordinance Number 2824 figure should include elevations referenced to the Alameda Datum for all corresponding threshold depths referenced to the current ground surface elevations. Such specification would afford property owners and occupants immediate knowledge of whether an excavation permit is required for the subsurface intrusion contemplated.*	***The "Environmental Disclosure" attached to the deeds included a section regarding the Marsh Crust. The section stated pertinent information about the marsh including threshold depths below the ground surface. Any amendment on the Ordinance that would be required may be an issue between the DTSC and the City of Alameda.***

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES (DTSC) COMMENTS
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Final Comments dated October 27, 2005; Received October 27, 2005; Navy Response date: January 18, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
13	*Incomplete Remedy Implementation: The Marsh Crust RAP/ROD selected the institutional controls remedy consisting three tiers of land use controls: (a) environmental restrictions in a deed, (b) Covenant to Restrict Use of Property, and (c) Ordinance Number 2824. The Navy has not implemented the first and second tiers of the selected remedy for the Alameda Point except the former East Housing Area. Please revise the Marsh Crust Five-Year Review Report to document the unfinished remedies and provide an implementation schedule.*	***Comment noted. The Environmental Restrictions in the Deed (item a), and Covenant to Restrict Use of Property (item b), would be implemented in the future transfer of the property included in the Marsh Crust and Subtidal area at Alameda Point. These land use controls and their implementation will be included in the LUC RD, which is scheduled for completion by the Navy in the FY 2006.***
14	*Fact Sheet and Public Notice: Please revise the fact sheet and newspaper public notice consistent with the changes made in the Five-Year Review Reports.*	***Comment noted.***
	Specific Comments	
1	*Acronym: Please include "FISCA" for the "Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex" in the acronym list of both reports.*	***'FISCA' will be added to both lists of acronyms.***
2	*Table of Contents: Please provide page numbers for Sections 8, 9, and 10 in both reports.*	***These sections are single pages of text with no subsections and no pages other than the first page. As such, in accordance with the writing style used for this report, page numbers are not shown on the table of contents.***

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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
3	*IR02 Five-Year Review Report, pages ES-1, 3-1, and 4-2: The Executive Summary and page 3-1 state that IR02 is about 12.5 acres in size; however, page 4-2 details that the western one-third and eastern two-third of IR02 are approximately 2.5 acres and 8.1 acres, respectively. Please reconcile the discrepancy and provide accurate acreages for the areas.*	***The RAP/ROD for Site IR02, dated June 25, 2001, on page 2-1 states that 'IR02 occupies approximately 10.6 acres'. The 8.1 acres and 2.5 acres mentioned add up to 10.6 acres. The 12.5 acres mentioned in the text will be changed to 10.6 acres for Site IR02.***
4	*IR02 Five-Year Review Report, page 1-2: Please replace "four appendices" with "eight attachments."*	***The modification will be made as suggested.***
5	*IR02 Five-Year Review Report, page 4-4, fourth paragraph, last sentence: Please replace the sentence with the following:* *"The DTSC has determined (a) that the soil remediation at Site IR02 has been completed, (b) that no further physical action is necessary to remediate PCB and cadmium in the soil at Site IR02, (c) that final decision on residential use in the western one-third of Site IR02 will depend on the results of the ongoing groundwater investigation and adequate remediation of the benzene/naphthalene plume, and (d) that DTSC would record a release of the existing land use restriction when DTSC has concluded that residential use is appropriate."*	***The sentence referred to will be expanded as suggested, in agreement with the DTSC letter to the Navy dated February 27, 2004.***
6	*IR02 Five-Year Review Report, page 6-1, fifth bullet: Please include DTSC representative as one of the interviewees.*	***DTSC will be added as one of the interviewees. Please refer to Section 6.5 of the report for a full listing of those interviewed, including DTSC.***

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Number	Comment	Response
7	*IR02 Five-Year Review Report, page 7-2: Please replace "CCOC" with "COC."*	***The text will be modified as suggested.***
8	*Marsh Crush Five-Year Review Report, page 1-2: Please replace "four appendices" with "seven attachments."*	***The modification will be made as suggested.***
9	*Marsh Crush Five-Year Review Report, page 4-4: Please spell out "LUCICP" before its use.*	***The modification will be made as suggested.***
10	*Marsh Crush Five-Year Review Report, page 7-1: Please spell out "SMP" before its use. There are two Site Management Plans, one prepared by the Navy and the other by Catellus Development Corporation, for different objectives. Please discuss the differences between the two.*	***'SMP' will be spelled out as suggested. Section 7.1, page 7-1, explains that there are two SMPs prepared by separate entities for different purposes.***

Response to Comment # 7 (continued):

CCR Title 22, §67391.1. Requirements for Land Use Covenants.

(a) Except as provided in subsection (f) of this section, a land use covenant imposing appropriate limitations on land use shall be executed and recorded when:

(1) Facility closure, corrective action, remedial or removal action, or other response actions are undertaken pursuant to chapter 6.5, 6.8, or 6.85 of division 20 of the Health and Safety Code, or article 1 of chapter 1, part 10.5 of the Education Code; and

(2) Hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land.

(b) The Department shall not approve or concur in a response action decision document which includes limitations on land use or other institutional controls, unless the limitations or controls are clearly set forth and defined in the response action decision document. Except as provided in subsection (f) of this section, any response action decision document shall (1) specify that the limitations or controls will be incorporated into an appropriate land use covenant as required by this section and (2) include an implementation and enforcement plan. The Department shall provide public notice of the response action decision document in a manner that meets the requirements of Health and Safety Code section 25356.1(e)(2) or section 25398.6(i). DTSC will consult with local agencies, including local reuse authorities, as appropriate.

(c) Except as provided in subsection (f) of this section,

(1) The Department shall not certify that a response action has been satisfactorily completed, with the exception of any necessary long term operation and maintenance activities, until such land use covenants required by this section have been signed and recorded in the county, or

(2) The Department shall not acknowledge final certification of closure of a hazardous waste disposal unit until such land use covenants required by this section also meet the requirements of sections 66264.119 or 66265.119 as applicable.

(d) All land use covenants pursuant to this section shall be executed by the Department and the landowner and shall be recorded in the county where the land is located. All land use covenants shall run with the land pursuant to Civil Code section 1471 and/or Health and Safety Code sections 25202.5, 25222.1, 25355.5, or 25398.7 and 25396(*l*) and shall continue in perpetuity unless modified or terminated in accordance with applicable law.

(e) Federal Property.

(1) The Department shall not consider property owned by the federal government to be suitable for transfer to nonfederal entities pursuant to 42 United States Code section 9620(h)3-4 where hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels which are not suitable for unrestricted use of the land, unless an appropriate land use covenant will be executed by the Department and the federal government and recorded in the county where the land is located in accordance with this section.

(2) Whenever the Department determines that it is not feasible to record a land use covenant for property owned by the federal government, such as transfers from one federal agency to another, the Department and federal government may use other mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property. Examples include: Amendments to the federal government facility master plan, physical monuments, or agreements between the federal government facility and the Department.

(f) Whenever the Department determines that it is not feasible to establish a land use covenant as a component of a remedy for a site, it may use other institutional control mechanisms to ensure that future land use will be compatible with the levels of hazardous materials, hazardous wastes or constituents, or hazardous substances which remain on the property.

(1) Examples include publicly owned tidelands trust property: such mechanisms may include, but are not limited to physical monuments, or a memorandum of agreement or consent agreement between the Department and the trustee for the tideland trust property.

(2) If the Department subsequently determines that it is feasible to record land use covenants for such sites, the Department shall ensure that the land use covenants are recorded in accordance with (d).

(g) Modification and Termination. The Department may modify or terminate land use covenants if it determines such modification or termination is protective of public health and safety and the environment.

(h) The Department shall require responsible parties, facility owners or operators, or project proponents involved in land use covenants to pay all costs associated with the administration of such controls.

(i) For purposes of this section:

(1) "Department" means the Department of Toxic Substances Control.

(2) "Federal property" means that property found in the Federal Property and Administrative Services Act of 1949, as amended, 40 United States Code sections 471 et seq.

(3) "Land use covenants" include easements, servitudes, covenants and restrictions which run with the land and restrict uses to protect public health and safety and the environment.

(4) "Response action decision document" means a remedial action plan, removal action workplan, record of decision, closure plan, documents written pursuant to a corrective action order or corrective action consent agreement, or other similar documents which formally select an action to be taken in response to the release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances.

(5) "Unrestricted use of the land" means that the land may be used for any purpose.

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Comments by: Anna-Marie Cook, USEPA

Number	Comment	Response
1	*Page 2-2, Chronology of Site IR 02 Events:* *The RI report stated that site-related soil contamination had been generally limited to the upper one foot of soil. However, the report fails to mention anything about PAH contamination. This chronology of events should include information pertaining to the most recent rounds of PAH sampling, the highest detection limits utilized for the PAH analyses, the screening level used to determine whether remediation is necessary, and the depth, prior to encountering the Marsh Crust, at which PAH contamination is found.* *The interim lead clean up goal for the residential portion of the IR 02 has been stated as 324 mg/kg. This level is significantly higher than that used to clean up residential portions of Alameda Point. There is no mention later in the report of this interim clean up goal being reevaluated for a potentially more conservative clean up number. Please explain why this level is considered protective for the Annex.*	***There has been no PAH contamination issue for the shallow soils at Site IR02 based on the current reuse plans: residential at the western one third portion of the site and industrial/commercial at the remaining two thirds portion. This has been documented in the interim restrictions of the Transfer Deed dated July 17, 2000 and FFSRA of May 2000. The FFSRA schedule states that PA/SI for base wide PAH excludes Site IR01 and west end of Site IR02. Except for Sites IR01 and IR02, the base wide PAH issue was whether or not the soil with PAHs was suitable for residential use. The PA/SI Action Level Decision Document reviewed by DTSC on September 11, 2000 has determined that at location #5, the residential reasonable maximum exposure (rme) risk due to PAHs was 5E-05 and the site wide rme was 7E-06; DTSC screening level of 0.62 mg/kg B(a)P was exceeded in some areas. As a result DTSC and Navy have agreed to restrict the Annex, except Site IR01 and western one third portion of Site IR02, to commercial/industrial use. This Statutory Five-Year review is about the PCB and cadmium impacted near surface soils at Site IR02. The Chronology of Site IR02 Events will be revised for clarity if necessary*** ***Contrary to the comment, the interim lead clean up goal of 324 mg/kg is for the industrial use portion of Site IR02. This is below the 2004 Soil PRGs of 400 mg/kg for residential use and 800 mg/kg for industrial use areas. The lead contaminated soil removal action started in 1995 and removed lead in soils with concentrations of up to 26,600 mg/kg. Confirmation sampling***

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Comments by: Anna-Marie Cook, USEPA

Number	Comment	Response
1 *(continued)*		***confirmed that the clean up goal was met. After the removal action, the 1996 RI used the College of Alameda for background metals to determine the COCs. Lead was eliminated as a COC because its concentration was lower than background. The UCL_{95} lead concentration was 35.6 mg/kg while the UCL_{95} at the college was 59.18. As stated, the draft Statutory Five-Year Review report will be clarified as necessary on the final submittal.***

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2	*Page 3-4, second paragraph: It appears that the interim clean up level for lead was not reviewed and that lead was not retained as a COC .*	***Lead was not retained as a COC. According to the 2001 RAP/ROD metals were eliminated as COCs if their UCL_{95} was less than the UCL_{95} of the reference. Site IR02 reference ambient soil UCL_{95} level for lead was 59.18 mg/kg. The UCL_{95} level for Site IR02 soils reported in the 1996 Site IR02 RI (0 to 10 feet) was 35.6 mg/kg. Please also see response to Comment # 1 above.***
3	*Page 3-4, Initial Response, second paragraph: While lead has been included here, the interim clean up goal still seems inconsistent with that used at the Point.*	***The current cleanup goal for lead in soil for residential use area under the petroleum cleanup program at Alameda Point is 221 mg/kg, and it is 750 mg/kg for the industrial use area. Please also see responses to Comments # 1 and # 2 above.***
4	*Page 3-4, Initial Response, last paragraph: The removal action has been described as reaching depths of up to two feet, yet in this paragraph the high PCB hit was at seven feet. Did the removal action go to seven feet? If so, the description of the removal action needs to be revised. If not, an explanation of why the contamination was not cleaned up needs to be given.*	***Yes, PCB removal in the 1998 second initial response which this comment is referring to extended to depths of seven feet in a specific and isolated area of Site IR02. Confirmation samples verified that the cleanup level of 1 mg/kg PCB was achieved at the conclusion of this action.*** ***This removal action took place near a sump located in the industrial/commercial use area of Site IR02. Figure 2 of the Site IR02 draft Five-Year Review Report (August 2005) illustrates the location of this sump.*** ***In the final Site IR02 remedial removal action, PCB- and cadmium-impacted soil excavations extended to depths of as much as 2 feet below ground surface. Figure 8 of the Final***

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Number	Comment	Response
4 (continued)		***Close-out Report dated December 26, 2001 for Site IR 02 supports this response. Figure 8 illustrates the grid system used and lists the excavation depths achieved. Figure 8 also shows that soils on the border of Site IR02 as well as soils immediately off-site have also been remediated when found to be necessary.***
5	*Page 3-5, Basis for Taking Action, fifth paragraph: EPA was unaware that the Navy and DTSC had agreed upon and were using a set of inorganic background concentrations taken from the College of Alameda. We request a copy of these concentrations so that we may compare them to the background concentrations generated for Alameda Point, and ensure that there are no major inconsistencies between the two sets of data.*	***College of Alameda soil sampling is discussed in the 1996 RI Report for Site IR02. The discussion provides tabulated data as well as soil sampling locations at the College of Alameda.***
6	*Page 4-2, last paragraph: While it is interesting to note the extent of contamination in the upper one foot of soil in the residential portion of IR 02, it appears an omission to exclude a discussion of the contamination found from 0 - 2 feet, 0 - 4 feet and 0 - 8 feet.*	***The chemical compounds of concern for the purposes of the shallow soil remediation and the subject of this five-year review report were PCBs and cadmium in soils. Please also see response to Comment # 4 above. The comment about 0-2, 0-4, and 0-8 feet is not clear and appears not to be applicable to the issues addressed in this five-year review.*** ***Remediation of PCB- and cadmium-impacted soils at Site IR02 have been completed, and DTSC has concurred.***

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Number	Comment	Response
7	*Page 4-4, last paragraph: The remediation of shallow soil at IR 02 has only been completed for PCB and cadmium contamination. In the Final Closure Report for IR 02 of 2001, it is stated that a RAP/ROD for PAH contamination in shallow soils will be forthcoming. This step has not been taken yet, and so the remediation of shallow soil at IR 02 cannot be considered complete.*	***Remediation of PCB- and cadmium-impacted soils at Site IR02 has been completed consistent with the intentions of the Site IR02 RAP/ROD (2001).*** ***PAH-impacted soils at the western, residential use portion of Site IR02 were removed during the PCB and cadmium mitigation event. The eastern portion of Site IR02 is restricted to commercial and industrial use, and no further action is required in this area.***
8	*Page 6-2, third paragraph: Without having the decision document for PAH contamination finalized, it is not possible to know whether there will be a prohibition on ingestion of produce grown on this property.*	***Please see response to Comment # 7 above.***
9	*Page 7-2, Section 7.3: PAH contamination remedial action objectives have not been set for soil above the March Crust, nor has the required depth of clean up been decided.* *In addition, the long term potential inhalation threat posed by naphthalene and benzene in the groundwater has not been discussed, and the protective measures necessary to allow current residential development in the vicinity of this groundwater contamination have not been explained in this document. Because there is no ROD for groundwater at this time, there are no remedial measures in place to prevent exposure through the inhalation pathway.*	***Please see response to Comment # 7 above for PAHs.*** ***Groundwater issues will be addressed under a different ROD. This five-year review was only for the PCB- and cadmium-impacted soils of Site IR02.***

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Comments dated October 06, 2005; Received October 17, 2005; Navy Response date: January 18, 2006

Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
	General Comments	
1	*Please add a description of activities related to radioactivity in IR02 shallow soil to the "Chronology of Site IR02 Events" in Section 2 of Part 1. Although the 5-Year Review briefly mentions radioactivity elsewhere in Part 1 (p. 4-3 bottom, p. 4-4 bottom, and p. 6-2), the radioactivity issue is poorly described. Considering Navy's extensive and protracted efforts to address radioactivity at IR02, a more explicit discussion would be useful, especially in the chronology table, with appropriate citations in Attachment A.*	***Under Chronology of Site IR02 Events, Navy will add the document "Final Report – Radiological Characterization Final Status and Sampling Project dated August 27, 2003".*** ***Following the completion of the RAP/ROD, the Navy re-investigated the entire Site IR02 for radioactivity in soil. California DHS concurred with the Navy determination that the radioactivity in Site IR02 soils is equal to background levels and acceptable for unrestricted use.*** ***Navy will expand the radioactivity in Site IR02 soil discussion in the next submittal of the five-year review report, and will add the above document in Attachment A.*** ***Please note that the principal subject of this five-year review is the PCB- and cadmium-impacted surficial soils of Site IR02. As such, other issues such as PAHs in site soils, groundwater, and radiological investigations at Site IR02 were not addressed in any detail, but mentioned for completeness. These issues are discussed in detail in numerous environmental documents that have been prepared for Site IR02. PAHs and groundwater issues will have their individual decision documents.***

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Number	Comment	Response
2	*The presentation of the documentation is somewhat confusing. It is not made clear to the reader why these two sites (IR 02 and Marsh Crust) are presented together (e.g., are they related to each other aside from the timing of the remedy implementation). It would be helpful if the title included numbering (such as: 1) IR 02... and 2) Marsh Crust....) to identify that the Review is a two-part document, each part dealing with a separate site.*	***A 'Preamble' section will be added after the title page of the report that will provide the reader with the type of information referred to in the comment.***
3	*Also, the use of the photo of the airfield in the draft fact sheet to represent the Marsh Crust issue is misleading, because marsh crust is more likely to be encountered at the eastern portion of the former NAS and on the FISC Annex site.*	***This five-year review for Alameda Point involved an evaluation of the protectiveness of the remedy implemented for the marsh crust <u>and</u> the former subtidal area materials. These materials jointly occur beneath Alameda Point; the subtidal area more so beneath the western portions of the site. As such, the photograph in question provides an insight into the existing ground surface overlying both of these materials.***
	Specific Comments	
1	*<u>Part 1, Section 3 Site Background</u> (p. 3-1 top) The text locates Alameda Facility/Alameda Annex (FISCA) "less than 1 mile east of the former Naval Air Station (NAS)". Please note that FISCA is adjacent to the former NAS, as is correctly stated elsewhere in the 5-Year Review (Part 2, p. 3-1 top).*	***The second sentence of the first paragraph of Section 3, page 3-1, will be modified as follows:*** ***"...FISCO main base, and adjacent to and east of the former..."***

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Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
2	*Part 1, Section 3.5 Basis for Taking Action (p. 3-5 middle) The text states "Chemicals of potential concern (COPC) identified in Site IR02 soils were grouped into five categories: PCBs, metals, VOCs, SVOCs, and TPH. Many of these contaminants appeared to originate from former industrial facilities that had operated in the region, including two manufactured gas plants and an oil refinery." Other Navy documents for FISCA and Alameda Point typically attribute only PAHs (polynuclear aromatic hydrocarbons) to these former industries. Please verify that other contaminant types also have been linked to the former industries.*	***Navy agrees that the wording of this third paragraph of page 3-5 is too general, and could lead to misunderstandings. As such, Navy will replace the entire third paragraph with the following:*** ***"The shallow soils within Site IR02 appear to have been impacted by the screening lot and scrapyard activities once conducted on this site. The site-related shallow soil contaminants include metals, PCBs, TPH as motor oil, and lead. Historic soil contaminants include arsenic, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chromium, chrysene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and vinyl chloride. In general, the site-related soil contamination appears to be limited to the upper one to two feet of the soil profile whereas the historic contaminants are typically found deeper in the soil profile."*** ***For additional details, please refer to the 1996 RI report for Site IR02.***
3	*Part 1, Section 4-1 Selected Remedy (p. 4-1) The first paragraph of this section states "The Site IR02 RI reported that ... the existing non-cancer risk hazard index was greater than 1.0 for exposure of future site workers to cadmium, in site shallow soils." (emphasis added) However, at the bottom of the same page, the third RAO is "Prevent ingestion of or direct contact with cadmium-contaminated soil by future residents in the 0 to 1-foot bgs interval in excess of concentrations that exceed a hazard quotient of 1." (emphasis added) Please clarify whether future site workers or future residents are the receptors.*	***The second part of the sentence referred to in this comment explains the potential risks to human health in the context of future industrial and residential land use scenarios. Further, all three RAOs, collectively, provide that future residents and future workers are deemed to be potential receptors.***

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ALAMEDA, CALIFORNIA

Comments dated October 06, 2005; Received October 17, 2005; Navy Response date: January 18, 2006

Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
4	*Part 1, Section 4-2 Remedy Implementation (p. 4-3 middle) The text states "Initially, a 6-inch thick layer of soil and other debris were excavated from each area in which the soil cleanup level for PCB or cadmium was exceeded, and confirmation samples were collected from remaining soils in the center and at the edge of the excavated areas (Figure 2)." Please revise Figure 2 to clearly show the areas discussed in this sentence.*	***Figure 2 is helpful in that it illustrates the portions of Site IR02 where PCBs and cadmium were reported exceeding cleanup levels. Figure 2 was used only in the decision document. Another figure will be included in the next submittal of this five-year review report illustrating the actual depths of excavations and confirmation sampling. This figure will be excerpted from the Final Closeout Report for Site IR02, dated December 26, 2001.***
5	*Part 1, Section 6.5 Interviews (p. 6-4 middle) A comma is missing in the seventh interviewee entry after the word "Principal". Please insert the comma to avoid misinterpretation of the interviewee's affiliation.* *This error also occurs in Part 2, Section 6.5 Interviews (p.6-4 bottom).*	***The text will be modified as suggested.***
6	*Part 2, Section 2 Chronology of Site Events (p. 2-2 middle) Please correct the double occurrence of "OU-2" in the 1999 entry.*	***The second 'OU-2' will be changed to 'OU-3'.***

NAVY RESPONSES TO CITY OF ALAMEDA COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005
INSTALLATION RESTORATION (IR) SITE 02 at
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MARSH CRUST at the Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex, and
MARSH CRUST AND FORMER SUBTIDAL AREA at Alameda Point
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Comments dated October 06, 2005; Received October 17, 2005; Navy Response date: January 18, 2006

Comments by: Debbie Potter, City of Alameda, Base Reuse and Redevelopment Manager

Number	Comment	Response
7	*Part 2, Section 2 Chronology of Site Events (p. 2-2 middle) The entry for February 15, 2000 states that the Marsh Crust Ordnance provides "standards and procedures to be followed regarding excavation and pile driving in the marsh crust area." (emphasis added) Please delete the reference to pile driving or note that Alameda Ordinance No. 2824 (the Marsh Crust Ordnance) exempts most pile driving: "13-56.4 Exception to Permit Requirement. a. No permit shall be required under this Section 13-56 for pile driving or other penetration of the marsh crust/subtidal zone that involves neither (i) bringing materials from below the threshold depth to above the threshold depth; nor (ii) exposure of construction workers to soil excavated from below the threshold depth."*	***'Supplement to Notice of Exemption, Marsh Crust Excavation Ordinance' portion of Ordinance No. 2824, under the section titled 'Ordinance' states that 'The Ordinance provides for standards and procedures to be followed regarding excavation and pile driving in the Marsh Crust area'.*** ***Section 13-56.4 states that a permit under the ordinance is not required as long as no marsh crust materials are brought up to above the threshold depth, whether due to pile driving or due to excavation of soils.***
8	*Part 2, Section 3.1 Physical Setting (p. 3-2 middle) The last sentence of this section is ' [he Bay Mud underlies both the marsh crust and the former subtidal land beneath Alameda Point." Please note that the southeast portion of Alameda Point is not underlain by Marsh Crust.*	***Comment noted.*** ***The source for this section of the five-year review report is the marsh crust and former subtidal area RAP/ROD for the FISCA and Alameda Point, dated February 2001, page 2-9, subsection titled 'Alameda Point'.***
9	*Part 2, Attachment E Interview Records (p. E-4 middle) Please change the location of the land use control documents to accurately report what Mr. McFann said. They are filed at the County Recorders Office for Alameda County.*	***The text will be modified as suggested.***

RESPONSES TO REVIEW COMMENTS

Dated February 2006

Received from:

DTSC
USEPA

On

DRAFT

STATUTORY FIVE-YEAR REVIEW REPORT

Dated August 2005

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

NAVY RESPONSES TO DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC) COMMENTS
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ALAMEDA, CALIFORNIA

Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
	The Department of Toxic Substances Control (DTSC) has received the Responses to Comments (RTCs) dated January 18, 2006 on the Installation Restoration Site 02 (IR02) Five-Year Review Report and Marsh Crust Five-Year Review Report. DTSC forwarded a comment letter on the documents on October 27, 2005. DTSC has reviewed the RTCs and has further comments as follows:	***Comment noted.***
1	*General Comments 1, 2, 3, 6, 7, 8, 9, 11, 13, and 14: DTSC agrees with the RTCs. DTSC awaits the revised reports and will provide further comment, if necessary.*	***Comment noted. Thank you.***
2	*Specific Comments 1 thru 4 and 6 thru 10: DTSC agrees with the RTCs. DTSC awaits the revised reports and will provide further comment, if necessary.*	***Comment noted. Thank you.***

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Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
3	*General Comment 4: DTSC agrees that the IR02 Five-Year Review Report should evaluate the effectiveness of the remediation of PCB and cadmium contaminated shallow soil as intended in the decision document. However, the discussion regarding the suitability of residential land use as presented in the IR02 Five-Year Review Report is erroneous as stated in DTSC's comment letter dated October 27, 2005. DTSC requests deletion of all language on the suitability of residential land use from the IR02 Five-Year Review Report, fact sheet, newspaper public notice, and various summary forms/documents. DTSC will require institutional controls in the upcoming decision documents for the groundwater and soil contaminations at IR02 before concurring that a portion of IR02 is suitable for residential land use.*	***Navy agrees with the comment. The Five-Year Review report will be revised to remove any ambiguities.***
4	*General Comment 5: The Navy plans to prepare the Land Use Control Remedial Design to recommend whether future five-year reviews would be necessary for the marsh crust and former subtidal area. Please note that five-year reviews at a site can only be ended when all hazardous substances, pollutants, or contaminants have been removed or remediated, and the residual chemical concentrations are at levels suitable for unrestricted use. DTSC believes such additional remediation is cost prohibitive and less likely to be implemented. Therefore, the Land Use Control Remedial Design would not be able to recommend termination of the five-year review program. Please remove such objective for the Land Use Control Remedial Design.*	***Navy will remove the objective as stated in this comment by DTSC.***

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Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
5	*General Comment 10: DTSC awaits a copy of homeowner deed of trust and will provide further comment on the Marsh Crust Five-Year Review Report, if necessary.*	***Comment noted. Navy has acquired addresses of properties in the former East Housing area, now known as Bayport Development, and it is in the process of researching at the Recorder's office for copies of deeds of trust.***
6	*General Comment 12: DTSC has determined that the Marsh Crust remedy (i.e., Ordinance Number 2824) is not effective because property owners would have difficulty in recognizing the threshold depths in plain language. The Navy adopted this Ordinance as the Marsh Crust remedy and the onerous is with the Navy to work with the City of Alameda to ensure remedy effectiveness. Since the threshold depth of mean higher high tide does not change with time, the City of Alameda should amend the Ordinance Number 2824 figure to specify the actual depth below the current ground surface beyond which an excavation permit is required. In addition, the Ordinance Number 2824 figure should include elevations referenced to the Alameda Datum for all corresponding threshold depths to account for future land alteration. Such specification would afford property owners and occupants immediate knowledge of whether an excavation permit is required for any potential subsurface intrusion.*	***As stated in Navy's previous response to this comment, any amendments to the City of Alameda Ordinance No. 2824 may be an issue between the DTSC and the City of Alameda. Navy will inform the City of Alameda about this comment from the DTSC.***

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Comments dated February 22, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
7	*Specific Comment 5: Please see Comment 3 of this letter.*	***Navy agrees with the comment. The Five-Year Review report will be revised to remove any ambiguities.***
	Please revise the Five-Year Review Reports in accordance with this letter and forward the redline reports in Portable Document Format files. DTSC will review the revised reports and subsequent RTCs to ensure that all comments have been addressed appropriately.	***Comment noted. Navy will incorporate the responses to the comments provided herein, as well as responses to DTSC's October 27, 2005 comments into the Five-Year Review Reports. The modifications to these reports will be redlined using the 'Track Changes' mode of Microsoft Word and the modified document will be transmitted to DTSC in PDF format.***

NAVY RESPONSES TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) Region IX COMMENTS
DRAFT STAUTORY FIVE-YEAR REVIEW REPORT dated August 2005 for
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ALAMEDA, CALIFORNIA

Comments dated February 13, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Anna-Marie Cook, Remedial Project Manager, USEPA Region IX

Number	Comment	Response
1	*EPA has received the Response to Comments from the Navy, dated January 18, 2006, for the Draft Statutory Five-Year Review for Site IR02 Alameda Annex and Marsh Crust at Alameda Annex and Alameda Point. It appears that all reviewers were confused about the intended scope of the Five Year Review and it is not clear from the Navy's response how the text will be revised to eliminate this confusion. EPA recommends that the Navy clarify in the Draft Final document, and in the title, that the review concerns* ***only*** *the effectiveness and protectiveness of the* ***PCB and cadmium*** *remedy for* ***shallow soils*** *at IR-02 and the remedy for the Marsh Crust at Alameda Annex and Alameda Point. EPA also recommends that the document clearly state that PAHs in soil above the depth of the Marsh Crust, and benzene and naphthalene contamination in groundwater will be addressed in future remedy decision documents.*	***Shallow soils will be added to the title of Site IR02 Five-Year Review report. The report will be revised to state that the groundwater benzene plume underneath Site IR02 will be addressed in future remedy decision documents.***

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Comments dated February 13, 2006; Received February 22, 2006; Navy Response date: March 20, 2006

Comments by: Anna-Marie Cook, Remedial Project Manager, USEPA Region IX

Number	Comment	Response
2	*As a follow up to the response to EPA's comment # 5, we request a copy of the 1996 Site IR-02 RI and associated tables to use as a reference for the background inorganics compiled from the College of Alameda site. There is an ongoing and unresolved discussion between the Navy and the Department of Toxic Substances Control concerning the adequacy of the Alameda Point background inorganic values and it is essential to the progress of the Alameda Point clean up program that a comparison between the DTSC approved College of Alameda data and the in-question Alameda Point background values be made as soon as possible to determine whether there are any major discrepancies. Since both the Navy and DTSC have accepted the College of Alameda values in the course of completing the RI/FS/RAP/ROD process for the Alameda Annex, it may be most efficient for the Alameda Point BCT to simply use the College of Alameda background data in lieu of that generated for Alameda Point. However, EPA will first need to verify that the data for the College of Alameda is adequate for use in this purpose.*	***A copy of the 1996 RI Report may have been provided to the USEPA when the document was distributed to the regulatory agencies. Navy will provide a copy of the report to the USEPA on a CD in pdf format.*** ***The 1996 RI report comprises five volumes. Information on the College of Alameda site investigation for developing background values for use in investigations of Site IR02 can be found in Volume I, Section 5, pages 5-83 to 5-92 and in associated tables of the 1996 RI report. Mary Parker recently provided a summary of the data on background metals taken from the College of Alameda.***

RESPONSES TO REVIEW COMMENTS

Dated April 2006

Received from:

DTSC

On

DRAFT FINAL

STATUTORY FIVE-YEAR REVIEW REPORT

Dated March 2006

MARSH CRUST and FORMER SUBTIDAL AREA MATERIALS REMEDY

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ALAMEDA, CALIFORNIA

Comments dated April 06, 2006; Received April 06, 2006; Navy Response date: April 14, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
	(A) FIRST STATUTORY FIVE-YEAR REVIEW OF REMEDIES IMPLEMENTED FOR PCB AND CADMIUM IMPACTED SHALLOW SOILS AT INSTALLATION RESTORATION SITE 02, FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX, ALAMEDA, CALIFORNIA *(B) FIRST STATUTORY FIVE-YEAR REVIEW OF REMEDIES IMPLEMENTED FOR MARSH CRUST AT FLEET AND INDUSTRIAL SUPPLY CENTER OAKLAND, ALAMEDA FACILITY/ALAMEDA ANNEX, AND MARSH CRUST AND FORMER SUBTIDAL AREA AT ALAMEDA POINT, ALAMEDA, CALIFORNIA* *The Department of Toxic Substances Control (DTSC) has received the redlined version of the above-mentioned reports dated March 2006 and the Responses to Comments dated March 20, 2006. DTSC issued comment letters on previous draft reports on October 27, 2005 and February 22, 2006. DTSC has reviewed the redlined reports and the responses. The remaining issues are as follows:*	***Comment noted.***

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Comments dated April 06, 2006; Received April 06, 2006; Navy Response date: April 14, 2006

Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
1	*Approval Authority: DTSC asserts approval authority on the Five-Year Review Reports. Please include the following signatory in the report approval sheets:* *Anthony J. Landis, P.E.* *Chief, Northern California Operations* *Office of Military Facilities* *Department of Toxic Substances Control*	***The Navy has reviewed its policy on conducting statutory five-year reviews for its Installation Restoration sites, and has confirmed that only the Navy has signature authority of its five-year review reports.*** ***The Navy further discussed its position on this issue with the DTSC at the Alameda BCT Meeting on April 12, 2006, and informed the DTSC that the Navy will sign the five-year review report.***
2	*Threshold Depth: The Remedial Action Plan/Record of Decision for the marsh crust at the former Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (FISCA) and marsh crust and subtidal area at the Alameda Point selected institutional controls as remedy. Such controls include environmental restrictions in a deed, Covenant to Restrict Use of Property, and the City of Alameda's Ordinance Number 2824. The remedy generally relies on Ordinance Number 2824 that requires a permit, hence proper soil management, for any excavation deeper than certain location dependent "threshold depth."* *The figure attached with Ordinance Number 2824 shows the threshold depths (in feet below ground surface) beyond which an excavation permit is required. The figure identifies areas with threshold depths of 15, 10, and 5 feet below ground surface. The figure also depicts areas where a permit would apply for excavation deeper than the mean higher high tide. Most of the Bayport homes are located in areas with a threshold depth of mean higher high tide.*	***Navy agrees that the threshold depth figure would need to be modified as site development and construction activities expected at FISCA and Alameda Point properties increase with time. The Navy has expressed its response to this request from the DTSC previously that modifications of this figure would be best undertaken by the City of Alameda and the DTSC, in accordance with the environmental covenants enacted between these two entities, and that the Navy would inform the City of Alameda as to the DTSC's request.*** ***At the Alameda BCT Meeting on April 12, 2006, the Navy confirmed its position on updates to the threshold depth figure by informing the DTSC that the Navy has contacted the City of Alameda (Dr. Peter Russell) about DTSC's request for modifications to the threshold depth figure. Dr. Russell had responded that the City of Alameda plans to do such***

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Comments by: Henry Wong, Remedial Project Manager, Office of Military Facilities

Number	Comment	Response
2 *(continued)*	*The U.S. Geological Survey defines "mean higher high tide" as the average height of the higher of two unequal daily high tides over 19 years. DTSC believes the term "mean higher high tide" is unclear to the public and the City's building officials. Landowners and occupants at properties identified with a threshold depth of mean higher high tide would have difficulty in discerning whether Ordinance Number 2824 applies.* *Since the threshold depth of mean higher high tide is not likely to change significantly within the five-year review timeframe, the City of Alameda should amend the Ordinance Number 2824 figure to specify the actual depth below the current ground surface beyond which an excavation permit is required. To account for future land alteration, the Ordinance Number 2824 figure should also include elevations referenced to the Alameda Datum for all corresponding threshold depths. Such specification would afford the City's building officials, property owners, and occupants immediate knowledge of whether an excavation permit is required for a proposed subsurface intrusion.* *DTSC reiterates that the marsh crust remedy (i.e., Ordinance Number 2824) as written is very difficult to interpret and enforce, and is therefore not effective. The Navy adopted this ordinance as the marsh crust remedy and the burden is with the Navy to work with the City of Alameda to ensure remedy effectiveness. Until the City of Alameda modified Ordinance Number 2824 as requested in this letter, DTSC would not be able to approve the Marsh Crust Five-Year Review Report.*	***modifications once the elevations of the final site construction grades have been established and it will coordinate with DTSC.***