

Recorded in Official Records, Solano County

3/10/2011  
11:26 AM  
AR49  
41

**RECORDING REQUESTED BY:**

**Marc C. Tonnesen**  
Assessor/Recorder

Lennar Mare Island, LLC  
690 Walnut Avenue, Suite 100  
Vallejo, California 94592

**P LENNAR MARE ISLAND LLC**

**Doc#: 201100021135**

<b>Titles:</b>	<b>1</b>	<b>Pages:</b>	<b>15</b>
<b>Fees</b>			<b>55.00</b>
<b>Taxes</b>			<b>0.00</b>
<b>Other</b>			<b>19.00</b>
<b>PAID</b>			<b>\$74.00</b>



**WHEN RECORDED, MAIL TO:**

Department of Toxic Substances Control  
Brownfields & Environmental Restoration Program  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721  
Attn: Ms. Barbara Cook, Performance Manager

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY**

**ENVIRONMENTAL RESTRICTION**

**Building 828 AL#01 PCB Site**

**RE: A Portion of Assessor Parcel Number (APN) 066-050-090, County of Solano**

**CALSTARS CODING: Project Code: 201383, Work Phase 11, PCA Code: 12090**

**Investigation Area C3, Former Mare Island Naval Shipyard  
Eastern Early Transfer Parcel  
Vallejo, California**

This Covenant and Agreement ("Covenant") is made by and between Lennar Mare Island, LLC, a California limited liability corporation ("LMI" or "Covenantor"), the current Owner of property to be restricted herein, situated on the Former Mare Island Naval Shipyard in Vallejo, County of Solano, State of California, described in Exhibit "B" and depicted on Exhibit "C" ("Property"), and the California Environmental Protection Agency, Department of Toxic Substances Control ("Department"). Pursuant to Civil Code section 1471, 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 Health & Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471 and

Health & Safety Code section 25355.5, that the use of the Property be restricted as set forth in this Covenant. The Parties further agree that the Covenant conforms with the requirements of California Code of Regulations, title 22, section 67391.1. The provisions of this Covenant shall be for the benefit of, and shall be enforceable by, the United States Environmental Protection Agency ("U.S. EPA"), as a third party beneficiary with respect to polychlorinated biphenyls ("PCBs"), pursuant to general contract law, including, but not limited to, Civil Code section 1559.

## ARTICLE I – STATEMENT OF FACTS

1.1 The Property, an approximately 2,500 square foot PCB-contaminated site, is located outside Building 828 and is designated as Building 828 AL#01. The Property was the site of United States Department of the Navy ("Navy") outdoor electrical substation on LMI's Eastern Early Transfer Parcel of Mare Island ("EETP"), as described and depicted in Exhibit "B" and "C", respectively. The Property is located on the eastern portion of Mare Island and comprises a portion of the area generally known as the EETP in Vallejo, County of Solano, State of California. The general location of the Property is depicted in Exhibits "A1" and "A2".

1.2 On March 26, 2002 the ownership of the EETP, which included the Property, was transferred from the Navy to the City of Vallejo ("City"), and then immediately on to Covenantor.

1.3 The EETP was previously part of the Navy's Mare Island Naval Shipyard. In April 2002, the Navy and the Department entered into a Federal Facility Site Remediation Agreement ("FFSRA"). Under the FFSRA for the EETP, the Navy retains its obligations under federal and state laws concerning hazardous substances on the Property due to the activities of the Navy.

1.4 The Covenantor, the Department, and the City entered into a Consent Agreement on April 16, 2001 ("Consent Agreement"), whereby the Covenantor is obligated to perform remedial actions, achieve regulatory closure, and comply with operation and maintenance requirements such as requirements of this Covenant on the Property. The Consent Agreement is on file with the Department and the Covenantor. The Consent Agreement subdivides the EETP into Investigation Areas ("IA"). The Property is located within one of these Investigation Areas—IA C3. The Property is located in the center portion on the western side of IA C3.

1.5 The Final Remedial Action Plan (RAP) for Investigation Area C3, Lennar Mare Island, Vallejo, California was approved by the Department on February 24, 2006. The Final IA C3 RAP specified that this Covenant is required as part of the selected remedial alternative in order to achieve regulatory closure for this site.

1.6 The remaining PCB concentrations within the concrete at the Property range from non-detect to 3.0 milligrams per kilogram ("mg/kg"), with an average concentration based on the 95 percent upper confidence limit of 1.1 mg/kg, as depicted in Exhibit "D". There are no known releases to the underlying soil. Based on the results of the risk evaluation using the average concentration of 1.05 mg/kg, the estimated potential cumulative cancer risk for PCBs in a

commercial/industrial setting is  $1.0 \times 10^{-6}$  with a risk hazard index less than 1 ( 0.09). Some remaining PCB concentrations exceeded the cleanup goal of 0.74 mg/kg.

1.7 The Toxic Substances Control Act (“TSCA”) and Complaint/Consent Agreement and Final Order for the Former Mare Island Naval Shipyard (“CA/FO”) established U.S. EPA regulatory closure requirements for PCBs on the EETP. The Covenantor is an “Intervenor” in the CA/FO, because under the terms of the Consent Agreement and other EETP transfer documents, the Covenantor has assumed certain responsibilities for regulatory closure on the EETP. On March 17, 2005, U.S. EPA approved the letter entitled “Application for Risk Based Disposal Approval for Polychlorinated Biphenyl Contamination at Building 828 Electrical Substation Within Investigation Area C3 in the Eastern Early Transfer Parcel of Mare Island Where No Further Action is Required Under the United States Environmental Protection Agency Consent Agreement and Final Order”, dated September 15, 2004, requiring a land use covenant as part of the site remediation at the Property. This Covenant fulfills that requirement. Pursuant to Paragraph 6(a) of the CA/FO, no further action is needed with respect to PCB contamination at the Property, provided that the applicable requirements of this Covenant are satisfied. The remaining residual PCB concentrations in concrete at the Property meet the alternative Substantive Cleanup Requirements for building floors in commercial/industrial areas set forth in Paragraph 8(b)(2) of the CA/FO for bulk PCB remediation wastes (which includes concrete).

1.8 The Department and U.S. EPA have concluded that the Property, subject to the restrictions of this Covenant, does not present an unreasonable risk to human health and the environment, provided that the following land uses are prohibited: residences, hospitals, schools for persons under the age of 18, and day care centers.

## ARTICLE II – DEFINITIONS

2.1 Department. “Department” means the California Environmental Protection Agency, Department of Toxic Substances Control and includes its successor agencies, if any.

2.2 Environmental Restrictions. “Environmental Restrictions” means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.3 Improvements. “Improvements” includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.4 Lease. “Lease” means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.5 Owner. “Owner” means the entity that has legal title to the Property, including its successors in interest, heirs and assigns, during its ownership of all or any portion of the Property.

2.6 Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.7 U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency, and includes its successor agencies, if any.

### ARTICLE III – GENERAL PROVISIONS

3.1 Restrictions to Run with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 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.

3.2 Binding Upon Owners and Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.3 Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease entered into for any portion of the Property.

3.4 Conveyance of Property. The Owner shall provide notice to the Department and U.S. EPA 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 written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number ("APN") noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.5 Costs of Administering the Covenant. The Department will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant. Covenantor shall not be held liable and shall not be held responsible for the non-payment by any subsequent Owner of the Department's costs in administering the Covenant.

## ARTICLE IV – ENVIRONMENTAL RESTRICTIONS

4.1 Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as a residential habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years.
- (d) A day care center for children.

4.2 Prohibited Activities.

(a) No activities at the Property that disturb the concrete pad (e.g., puncture, grind, erode or remove) shall be allowed without written notice to the Department and U.S. EPA at least thirty (30) days prior to planned activities and written approval by the Department and U.S. EPA prior to implementation.

(b) No Owner or Occupant shall change the use of the Property in a manner that will materially increase the risk of exposure to PCBs, unless a remediation plan that at least reduces such increased exposure risks is approved by the Department and U.S. EPA and the remediation plan is implemented prior to changing the use of the Property. Compliance with this provision shall be presumed if the Owner or Occupant provides the Department with written notice at least 30 days prior to any change in use of the Property, and the Department and U.S. EPA either informs the Owner or Occupant that no remediation plan is necessary, or the Department and U.S. EPA fail to respond to the Owner or Occupant within 30 days of the date of submission of the remediation plan.

(c) In the event that any of the Property is to be demolished, additional measures for construction worker protection and disposal of bulk PCB remediation waste will be required pursuant to Title 40, C.F.R. Section 761. Any remediation of PCBs on the Property or management of PCB waste shall be pursuant to applicable state and federal laws.

4.3 Inspection and Reporting. The Owner of the Property shall annually perform an inspection to verify that the use of the Property is in compliance with the provisions of this Covenant. Based on the annual inspection, a report shall be developed and submitted to the Department and U.S. EPA by March 31<sup>st</sup> of each calendar year, documenting the findings of the annual inspection. The report shall describe the monitoring and inspection of the Property for compliance with this Covenant, state the deficiencies and describe the measures taken to address these deficiencies.

4.4 Five-Year Review. In addition to the annual reviews noted above, after a period of five (5) years from the recordation of this Covenant and every five (5) years thereafter, Owner shall review and reevaluate to determine if human health and the environment are being

adequately protected by the remedy as implemented. Within thirty (30) days before the end of each five-year period, Owner shall submit a five-year review workplan to DTSC for review and approval. Within sixty (60) days of DTSC's approval of the workplan, Owner shall implement the workplan and submit a report of the results of the five-year review. The report shall describe the results of all inspections, sampling analyses, tests and other data generated or received by Owner and evaluate the adequacy of the implemented remedy in protecting human health and the environment. As a result of any review work performed, DTSC may require Owner to perform additional review work or modify the review work previously performed by Owner. This report shall be submitted in conjunction with the annual inspection report for year five. Such a five-year review report shall be submitted on March 31<sup>st</sup> of the fifth calendar year and every five years thereafter.

4.5 Access for the Department and U.S. EPA. The Department and U.S. EPA 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 and/or U.S. EPA to protect public health or safety or the environment.

4.6 Access for Implementing Five Year Review. If the entity or person(s) responsible for implementing the periodic Five Year Review is not the Owner, the entity or person(s) responsible for implementing the Five Year Review shall have reasonable right of entry and access to the Property for the purpose of implementing the periodic Five Year Review until the Department determines that no further periodic Five Year Review is required.

4.7 Inconsistent Covenant Activities - Notification to the Department and U.S. EPA. The Owner shall notify the Department and U.S. EPA within 3 business days of discovery of any activity that violates or is inconsistent with the provisions of this Covenant. The notification shall include any corrective measures taken or planned to address the violation or inconsistency. The Owner shall notify the Department and U.S. EPA (only in regards to PCBs) within 3 business days of discovery of a previously unknown hazardous substances release to the environment, and in all cases the Owner shall comply with applicable notification requirements under state and federal law. The notification shall include a description of any interim containment or corrective measures taken or planned.

## ARTICLE V – ENFORCEMENT

5.1 Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

5.2 Enforcement Rights of U.S. EPA as a Third Party Beneficiary. U.S. EPA, as a third party beneficiary, has the right to enforce the Environmental Restrictions contained herein.

## ARTICLE VI – VARIANCE, TERMINATION, AND TERM

6.1 Variance. Owner, 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 Health and Safety Code section 25233 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No variance may be granted under this paragraph without prior notice and opportunity to comment by U.S. EPA.

6.2 Termination or Partial Termination. The Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. No termination may be granted under this paragraph without prior notice to and opportunity to comment by U.S. EPA.

6.3 Term. Unless ended in accordance with the paragraph 6.2, by law, or by the Department in the exercise of its discretion, after providing notice to and opportunity to comment by U.S. EPA, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII – MISCELLANEOUS

7.1 No Dedication or Taking 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. Further, nothing set forth in this Covenant shall be construed to affect a taking under federal or state law.

7.2 Recordation. The Covenantor shall record this Covenant, with Exhibits “A1”, “A2”, “B”, “C”, and “D”, in the County of Solano within ten (10) days of the Covenantor’s receipt of a fully executed original.

7.3 Notices. Whenever any person gives or serves any notice (“Notice” as used herein 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 as follows:

To Covenantor:

Lennar Mare Island, LLC  
Attention: Mr. Neal Siler, Environmental Manager  
690 Walnut Avenue, Suite 100  
Vallejo, California 94592

To Department:

Department of Toxic Substances Control  
Brownfields & Environmental Restoration Program  
Attention: Ms. Barbara Cook, P.E., Performance Manager  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

To U.S. EPA:

U.S. EPA Region IX  
Attention: PCB Coordinator (CMD-4-2)  
75 Hawthorne Street  
San Francisco, California 94105

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.

7.4 Partial Invalidity. If this Covenant or any of its terms are 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 herein.

7.5 Incorporation of Attachments and Exhibits. All attachments and exhibits to this Covenant are incorporated herein by reference.

7.6 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

COVENANTOR: LENNAR MARE ISLAND, LLC

By: *Thomas Sheaff*  
Name: THOMAS SHEAFF  
Title: VICE PRESIDENT  
Date: MARCH 8, 2011

State of California

County of CONTRA COSTA

On MARCH 8, 2011 before me,

*Carol L. Ashmore, Notary Public*  
(space above this line is for name and title of the officer/notary),

personally appeared *THOMAS SHEAFF*, who 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. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

*Carol L. Ashmore* (seal)  
Signature of Notary Public



IN WITNESS WHEREOF, the Parties execute this Covenant.

THE CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

By: Barbara J Cook  
Name: BARBARA J COOK  
Title: BRANCH CHIEF  
Date: MARCH 8, 2011

State of California

County of Contra Costa

On March 8, 2011 before me,

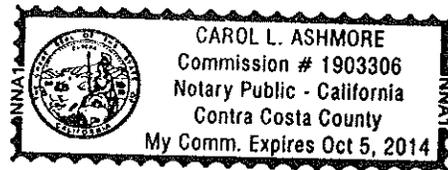
Carol L. Ashmore, Notary Public

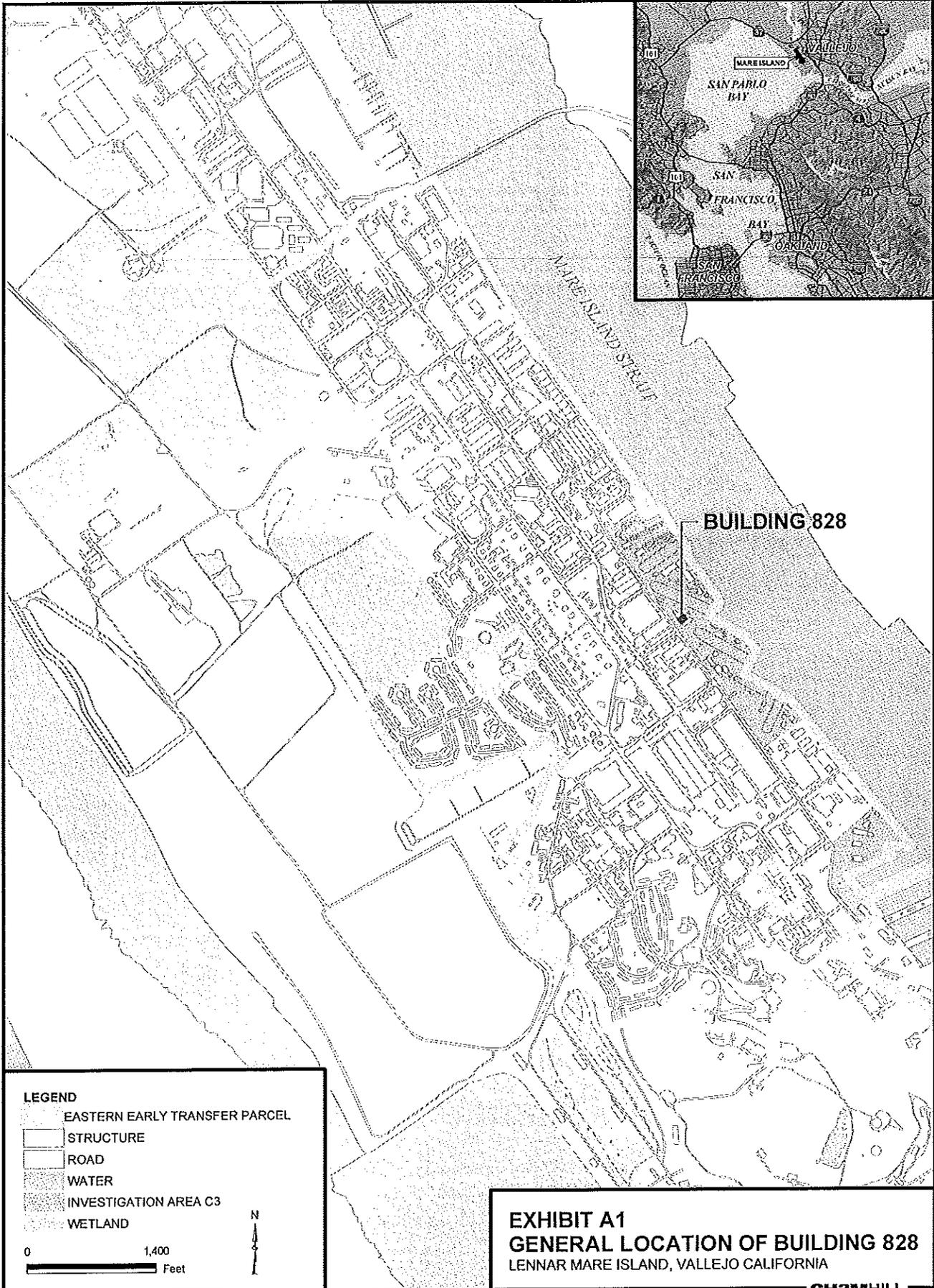
(space above this line is for name and title of the officer/notary),

personally appeared BARBARA J. COOK, who 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. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Carol L. Ashmore (seal)  
Signature of Notary Public





**LEGEND**

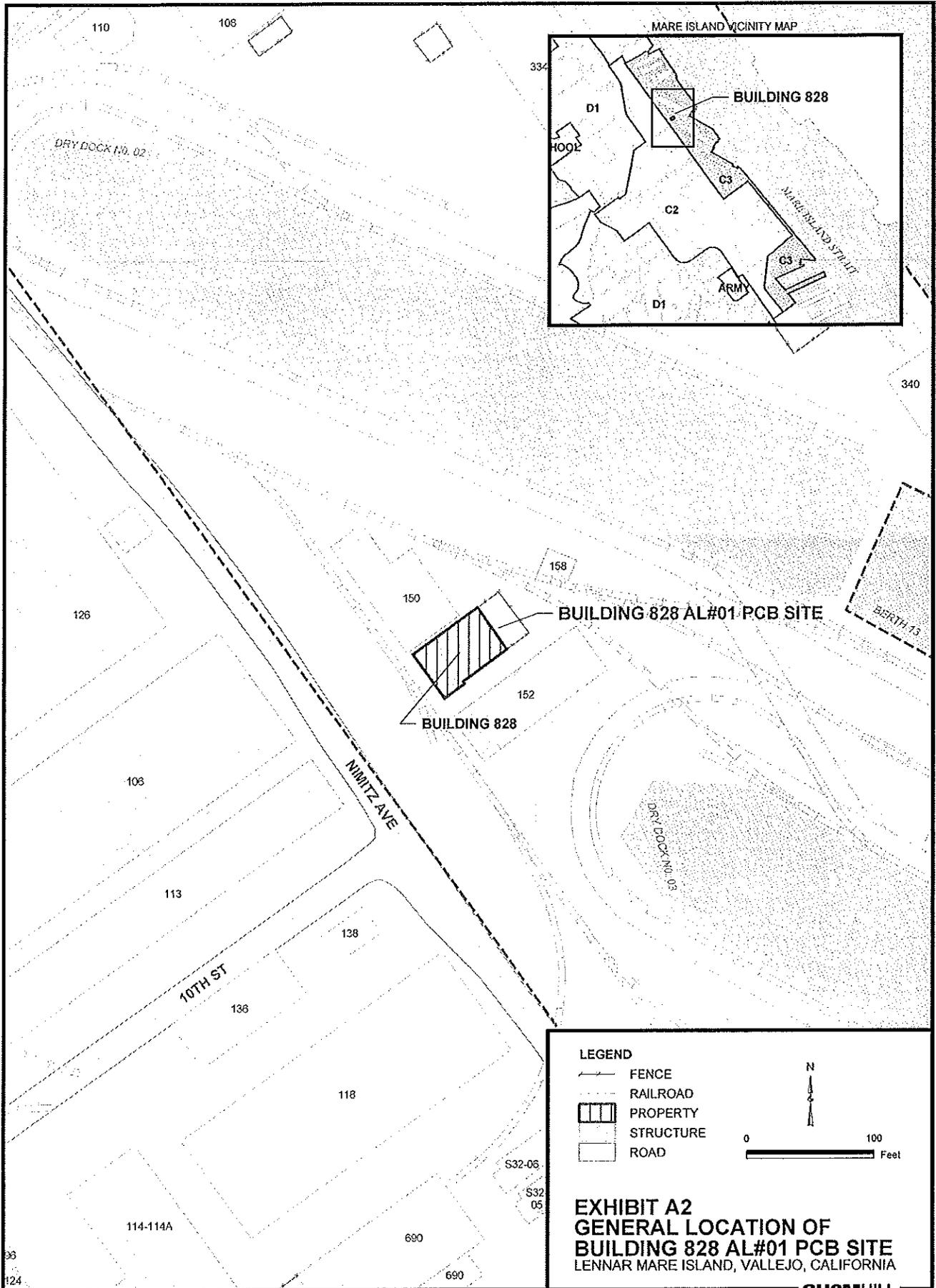
-  EASTERN EARLY TRANSFER PARCEL
-  STRUCTURE
-  ROAD
-  WATER
-  INVESTIGATION AREA C3
-  WETLAND

0 1,400  
 Feet



**EXHIBIT A1**  
**GENERAL LOCATION OF BUILDING 828**  
 LENNAR MARE ISLAND, VALLEJO CALIFORNIA

**CH2MHILL**



Lennar Mare Island, LLC  
A portion of A.P.N. 0066-050-090  
Building 828 AL#01 PCB Site, Environmental Restriction Area

**Exhibit B  
Legal Description**

All that real property situate on the lands commonly known as Mare Island Naval Shipyard, in the City of Vallejo, County of Solano, State of California, described as follows:

Being a portion of the "Primary Eastern Early Transfer Parcel", described as "Parcel No. 1" in the Grant Deed to Lennar Mare Island, LLC, a California limited liability company, which was recorded on March 26, 2002, Series No. 2002-37966, Solano County Official Records, more particularly described as follows:

Commencing at a 2-1/2" aluminum disk monument in concrete, stamped "Mare Island Control Point 18, McGill-Martin-Self Inc. Orinda CA", as shown on that certain Record of Survey filed November 14, 1996, in Book 21 of Surveys at Page 94 of Official Records of Solano County. Having established grid coordinates of North 1,797,842.590 U.S Survey feet and East 6,483,739.254 U.S Survey feet, referenced to the California Coordinate System of 1983, Zone 2 as given in that particular report entitled, "Summary Report, Horizontal Control Network, Mare Island Naval Shipyard, Vallejo, California, MMS Job #1587, McGill Martin Self, Inc.";

**THENCE:** South 58°00'12" East, 1170.11 feet to the **TRUE POINT OF BEGINNING** for this description, said point of beginning being the most northerly corner of Building 828 AL#01 PCB Site;

The following six (6) courses are coincident with the edge of building:

**THENCE:** South 35°47'00" East, 40.00 feet;  
**THENCE:** South 54°13'00" West, 42.56 feet;  
**THENCE:** South 35°47'00" East, 2.21 feet;  
**THENCE:** South 54°13'00" West, 19.44 feet;  
**THENCE:** North 35°47'00" West, 42.21 feet;  
**THENCE:** North 54°13'00" East, 62.00 feet to the **POINT OF BEGINNING**.

Containing an area of 0.058 acre or 2,523 square feet, more or less.

The Basis of Bearing for the above description is the California Coordinate System (1983), Zone 2. Distances shown are grid distances. To obtain ground distances multiply grid distances by 0.999938.

The real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

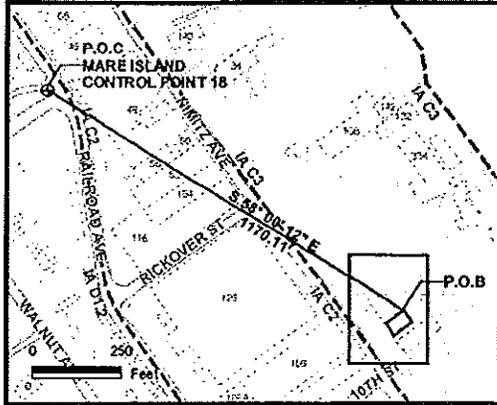
End of Description

Date: March 5, 2010

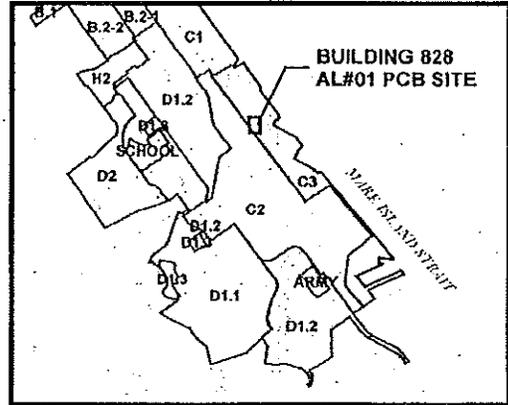
David J Stringer  
David J Stringer, PLS 5590



MARE ISLAND CONTROL POINT VICINITY MAP



MARE ISLAND VICINITY MAP



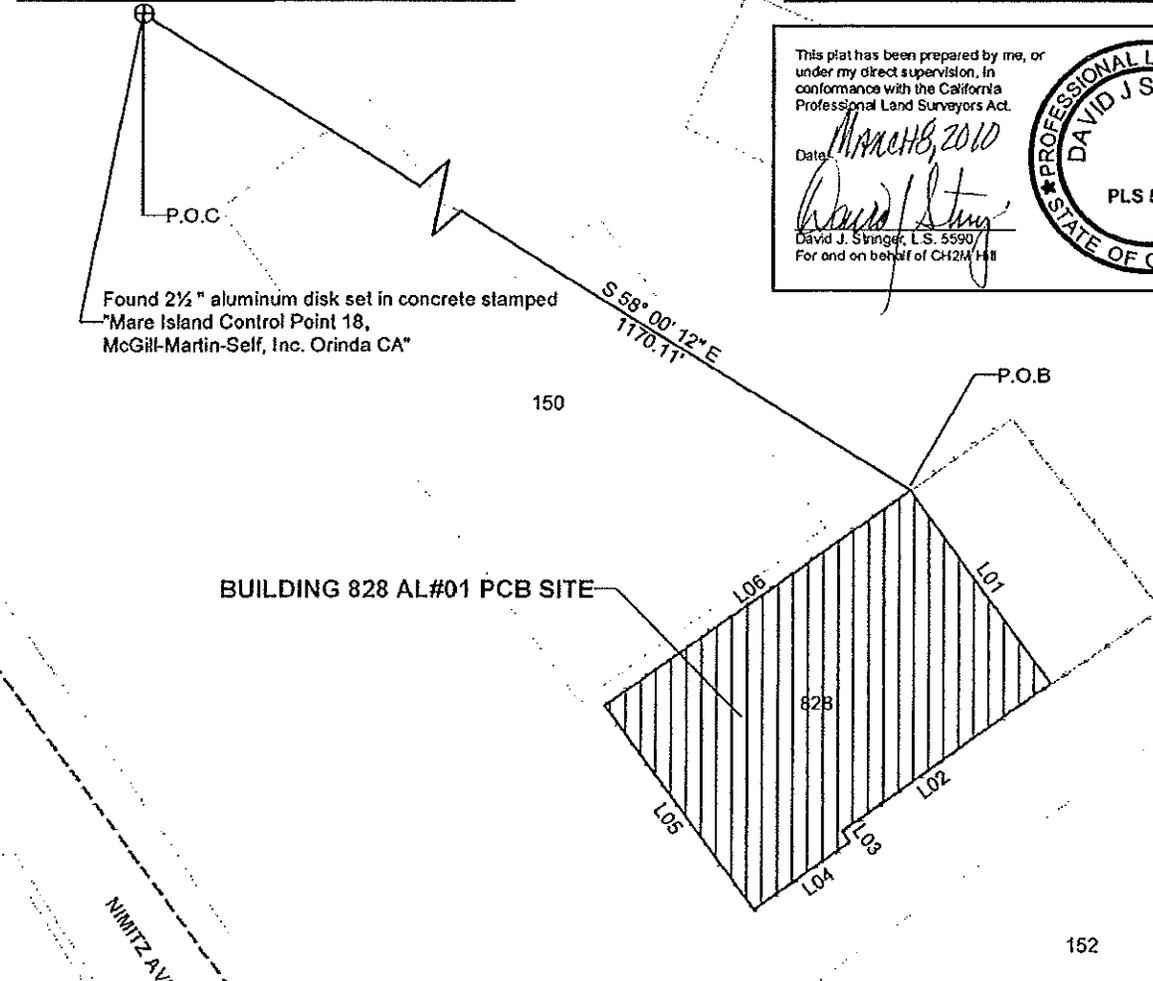
This plat has been prepared by me, or under my direct supervision, in conformance with the California Professional Land Surveyors Act.

Date: *March 8, 2010*

*David J. Stringer*  
David J. Stringer, L.S. 5590  
For and on behalf of CH2M HILL



Found 2 1/2" aluminum disk set in concrete stamped "Mare Island Control Point 18, McGill-Martin-Self, Inc. Orinda CA"



LINE LENGTH AND BEARING TABLE		
LINE	LENGTH	BEARING
L01	40.00	S35°47'00"E
L02	42.58	S54°13'00"W
L03	2.21	S35°47'00"E
L04	19.44	S54°13'00"W
L05	42.21	N35°47'00"W
L06	62.00	N54°13'00"E

NOTE: The Basis of Bearing for the above description is the California Coordinate System (1983), Zone 2. Distances shown are grid distances. To obtain ground distances multiply grid distances by 0.999938.

**LEGEND**

- ⊕ LMI CONTROL POINT
- - - FENCE
- [Hatched Box] PROPERTY
- [Solid Box] STRUCTURE
- - - ROAD

0 30 Feet

**EXHIBIT C  
PROPERTY ENVIRONMENTAL  
RESTRICTION AREA  
LENNAR MARE ISLAND, VALLEJO, CALIFORNIA**

