

RECORDING REQUESTED BY:

U. S. Army Corps of Engineers
Real Estate Division, ATTN: CESP-K-RE-MC
1325 J Street
Sacramento, CA 95814-2922

WHEN RECORDED, MAIL TO:

ATTN: Daniel T. Ward, P.E.
Supervising Hazardous Substances Engineer I
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
Sacramento Office
8800 Cal Center Drive
Sacramento, CA 95826-3200

(Space Above This Line For Recorder's Use Only)

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

**MONTEREY-SALINAS TRANSIT – MUNITIONS AND EXPLOSIVES OF CONCERN
PARCELS L2.3 and L2.4.1**

Re: This Covenant and Agreement (“Covenant”) is for a portion of the former Fort Ord consisting of contiguous Parcels L2.3 and L2.4.1 (the “Property”). The Property is described in the Finding of Suitability to Transfer (FOST), Former Fort Ord, California, Parker Flats Munitions Response Area, Parcels L2.3 and L2.4.1 (FOST 11). The Property lies within “Munitions Response Site 13B” (“MRS-13B”). The Property, described below and shown on Exhibit A, is within the jurisdiction of the County of Monterey, California.

This Covenant is made by and among The United States of America acting by and through the United States Department of the Army (also referred to herein as the “Covenantor”), the current owner of the herein described real property located in the County of Monterey, State of California, shown on Exhibit A and described in Exhibit B, attached hereto and incorporated herein by this reference (the “Property”), and the State of California acting by and through the Department of Toxic Substances Control (“Department”).

The United States Environmental Protection Agency (U.S. EPA) placed Fort Ord on the National Priorities List (Superfund) in 1990. All of the former Fort Ord facility is subject to the requirements of the federal Comprehensive Environmental Compensation and Liability Act (“CERCLA”).

The Covenantor's statutory authority for transferring this Property is the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510, Title XXIX), as amended. The Covenantor intends to transfer the Property to the Fort Ord Reuse Authority ("FORA"). As a part of that transfer, the Covenantor will impose separate deed restrictions on the Property, which will be similar to the restrictions contained in this Covenant. FORA intends to transfer the parcels it receives to the Monterey-Salinas Transit ("MST").

Pursuant to California Civil Code Section 1471, the Department has determined this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence of hazardous materials, as defined in the California Health and Safety Code Section 25260(d).

The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property will be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 The Property, consisting of Parcels L2.3 and L2.4.1 and totaling approximately 27 acres, is more particularly depicted in Exhibit A and described in Exhibit B. The Property is located on the former Fort Ord, California and within the jurisdiction of the County of Monterey, California. The name of the Property on the legal description in Exhibit B is "EDC Parcels L2.3 and L2.4.1," and its intended reuse is as public transportation and maintenance facilities.

1.02 The Property includes a portion of MRS-13B that has been evaluated for the presence of Munitions and Explosives of Concern ("MEC"). As described in FOST 11, munitions responses were completed at MRS-13B, significantly reducing the potential risks to human health and the environment. Even though all response actions have been complete, there remains a possibility that MEC may exist on the Property because detection technologies may not detect all MEC present and some areas contain barriers (e.g., pavement, buildings) that, while providing protection against any MEC potentially present, preclude the use of detection technologies.

1.03 Pursuant to the Fort Ord Federal Facility Agreement, signed by the Parties and the U.S. EPA in 1990, in which the United States Department of the Army agreed to complete the cleanup at Fort Ord, a Record of Decision ("ROD") was signed by the Parties and the U.S. EPA for the Parker Flats Munitions Response Area ("MRA"). The ROD describes the selected remedy for the Parker Flats MRA of land use controls (LUCs). The Remedial Design/Remedial Action ("RD/RA") Work Plan for the Parker Flats MRA presents the procedures that will be used to implement the selected remedy.

1.04 The remedial action was completed pursuant to the ROD and the RD/RA Work Plan. The U.S. EPA determined remedial action is complete in a letter dated July 27, 2009.

1.05 The County of Monterey ("County") adopted Ordinance No. 5012, entitled "Digging and Excavation on the Former Fort Ord" (hereinafter "Excavation Ordinance") amending the County Code to add Chapter 16.10. The Excavation Ordinance addresses the potential MEC risk by

prohibiting excavation, digging, development or ground disturbance of any type that involves the displacement of ten (10) cubic yards or more of soil on the former Fort Ord without a permit. A copy of County Code Chapter 16.10 is attached to this Covenant as Exhibit C.

1.06 The Fort Ord Reuse Plan land use concept, as modified by the Assessment, East Garrison – Parker Flats Land Use Modifications, for Parcels L2.3 and L2.4.1 does not include potential sensitive land uses, including residential, hospital, school or day care. Such uses are restricted as set forth in this Covenant.

1.07 As described in FOST 11, Parcels L2.3 and L2.4.1 are undeveloped and have never had any buildings or structures.

ARTICLE II

DEFINITIONS

2.01 County. “County” means the County of Monterey.

2.02 Covenantor. “Covenantor” means the United States of America acting through the Department of the Army.

2.03 DDESB. “DDESB” means the Department of Defense Explosive Safety Board.

2.04 Department. “Department” means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.05 EOD. “EOD” means Explosive Ordnance Disposal.

2.06 FORA. “FORA” means the Fort Ord Reuse Authority and includes its successor entities, if any.

2.07 FOST 11. “FOST 11” means the *Finding of Suitability to Transfer, Former Fort Ord, California, Parker Flats Munitions Response Area Parcels L2.3 and L2.4.1*.

2.08 Jurisdictions. “Jurisdictions” means the County of Monterey, the City of Del Rey Oaks, the City of Marina, the City of Monterey, the City of Seaside, California State University Monterey Bay, University of California Santa Cruz, and Monterey Peninsula College.

2.09 MEC. “MEC” means Munitions and Explosives of Concern, which are military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C., Section 101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C., Section 2710(e)(2); or (C) munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C., Section 2710(e)(3), present in high enough concentrations to pose an explosive hazard. For the purposes of the basewide Military Munitions Response Program (MMRP) being conducted for the former Fort Ord, MEC does not include small arms ammunition (i.e. ammunition without projectiles containing explosives, other than tracers, that is .50 caliber or smaller, or for shotguns).

2.10 MOA. “MOA” means the Memorandum of Agreement among the Fort Ord Reuse Authority, Monterey County and Cities of Seaside, Monterey, Del Rey Oaks and Marina, California State University Monterey Bay, University of California Santa Cruz, Monterey Peninsula College, and the Department of Toxic Substances Control Concerning Monitoring and Reporting on Environmental Restrictions on the Former Fort Ord, Monterey County, California.

2.11 MST. “MST” means the Monterey-Salinas Transit.

2.12 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.

2.13 Occupant. “Occupant” means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property after the Covenantor has conveyed the Property.

2.14 RD/RA Work Plan. “RD/RA Work Plan” means the *Remedial Design/Remedial Action Work Plan, Parker Flats Munitions Response Area*.

2.15 ROD. “ROD” means the *Record of Decision, Parker Flats Munitions Response Area, Track 2 Munitions Response Site*.

2.16 U.S. EPA. “U.S. EPA” means the United States Environmental Protection Agency.

ARTICLE III

GENERAL PROVISIONS

3.01 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 thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code Sections 25222.1, and 25355.5(a)(1)(c), and Civil Code Section 1471; (b) inures to the benefit of the Department and passes with each and every portion of 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/Occupants. Pursuant to Health and Safety Code Sections 25222.1 and 25355.5(a)(1)(C) and Civil Code Section 1471, this Covenant binds all Owners and Occupants of the Property, and their heirs, successors, and assignees, and their agents, employees, and lessees. Pursuant to Civil Code Section 1471, all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department.

3.03 Accompaniment to Deeds and Leases. This Covenant shall accompany all deeds and leases for any portion of the Property.

3.04 Conveyance of Property. The immediate past Owner shall notify the Department of the conveyance of the Property and the name and address of the new Owner within one year of such

conveyance. This requirement will be deemed satisfied if the annual reporting agreed to for the Property in the Memorandum of Agreement (MOA) described in Paragraph 5.01 has been completed for the year the conveyance occurred. The Department shall not have, by reason of this Covenant, authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.05 Costs of Administering this Covenant. The Department has incurred and will in the future incur costs associated with the administration of this Covenant. Pursuant to California Code of Regulations, title 22, section 67391.1(h), the Department's costs associated with the administration of this Covenant must be paid. The Department has entered into a Memorandum of Agreement (MOA) dated February 27, 2008 with FORA and the Jurisdictions to pay the Department's costs associated with Covenants at the former Fort Ord. The MOA provides that the Department's costs associated with administering this and other Covenants will be paid by FORA until FORA ceases to exist, and then by the County thereafter. Cost recovery may also be pursued by the Department under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law. Pursuant to the MOA, the Department will invoice FORA and the County for the Department's costs on a quarterly basis.

ARTICLE IV

RESTRICTIONS

4.01 Prohibited Uses. Continuing until this Covenant is terminated pursuant to Paragraph 6.02 herein, the Property shall not be used for any of the following purposes:

- (a) A residence, including any condominium, mobile home or factory built housing, constructed or installed for residential habitation.
- (b) A hospital (other than a veterinary hospital);
- (c) A public or private school for persons under the age of 21, except for post-secondary schools; and
- (d) A day care center for children.

4.02 Prohibited Activities/Soil Management Requirements.

- (a) Activities (including soil disturbance) in violation of County Code Chapter 16.10 (Exhibit C), as modified, are prohibited.
- (b) Ground disturbing or intrusive activities (e.g. digging, drilling, etc.) shall comply with the following restrictions:
 - (1) MEC recognition and safety training is required for personnel conducting ground-disturbing or intrusive activities. Prior to conducting any planned ground-disturbing or intrusive activities, the Owner or Occupant shall provide Notice to

the Covenantor and shall ensure all personnel have completed MEC recognition and safety training prior to performing ground-disturbing or intrusive activities.

- (2) Construction monitoring is required during any ground-disturbing or intrusive activities that disturb more than 10 cubic yards of soil.
 - i. Construction monitoring shall be arranged during the planning stages of a construction project, prior to the start of any ground-disturbing or intrusive activities. UXO-qualified personnel will monitor ground-disturbing and intrusive construction activities for the potential presence of MEC, and will (1) be equipped with appropriate geophysical equipment; and (2) comply with qualification requirements of the Department of Defense Explosive Safety Board (DDESB) Standard 6055.9, “DoD Ammunition and Explosive Safety Standards”, February 2008, and other appropriate standards. If MEC is encountered, ground disturbing activities in the area and adjacent areas shall cease and the encounter will be reported to local law enforcement. The local law enforcement agency will promptly request DoD support for response (e.g., an Explosive Ordnance Disposal [EOD] unit).
 - ii. After the EOD response, the Covenantor, in coordination with U.S. EPA and the Department, will reassess the probability of encountering MEC. Such assessment may include additional investigation, which will be coordinated with U.S. EPA and the Department. As part of the assessment the Covenantor will evaluate available historical records, onsite investigation data and other physical evidence, such as:
 1. MEC items that have been found to-date during the ongoing construction project.
 2. Most-recent five-year review.
 3. Annual reports since the most recent five-year review.
 - iii. The Covenantor will propose to U.S. EPA and the Department an appropriate site level designation (low or moderate/high), and a recommendation for the level of UXO support appropriate for the site condition. The agency consultation process will be completed as expeditiously as practicable. The probability of encountering MEC and the resulting level of UXO support will be determined jointly by the Covenantor and U.S. EPA, in consultation with the Department. If the probability of encountering MEC is low, construction may resume with construction monitoring. If the probability of encountering MEC is moderate/high, the level of UXO support will be modified based on an evaluation of the available information and DDESB guidance. If the Covenantor, and/or U.S. EPA in consultation with the Department, determines that the selected remedy is no longer protective, the

Covenantor will propose, and the Covenantor and U.S. EPA will jointly select, an additional response action or modification of the remedy. The Department will be provided an opportunity to review and comment on the proposal. The additional actions required and their remedial objectives will be documented in an Explanation of Significant Differences (ESD) or Amendment to the Record of Decision (ROD), as appropriate.

- (c) The Owner or Occupant shall conduct annual physical on-site inspections to confirm continued compliance with these Restrictions in accordance with MOA between Department, FORA, and the Jurisdictions. The monitoring results will be included in a separate report or as a section to another environmental report, if appropriate, and provided to the Parties and the U.S. EPA pursuant to Paragraph 5.01 herein. The Owner or Occupant will notify the Department, as soon as practicable, of any MEC-related data identified during use of the Property, and report the results of monitoring activities annually. The annual monitoring information will be used by the Covenantor in preparation of the five-year review to evaluate the effectiveness of the remedy. As part of the annual monitoring and five-year review reporting, the Parties and U.S. EPA will review MEC-related data collected during the Property's development to determine whether the MEC recognition and safety training and/or construction monitoring should continue. If MEC has not been encountered during development or use of an area, the training and/or construction monitoring may be discontinued pursuant to Paragraph 6.02 herein; however, it may be subject to reinstatement if MEC is encountered in the future.

4.03 Written Notice of Presence of MEC. Prior to the sale, lease, or sublease of the Property, or any portion thereof; or the execution of a license or easement on the Property, the Owner, lessor, or sub-lessor shall give the buyer, lessee, or sub-lessee written Notice that there is the potential for the presence of MEC in the soil of the Property.

4.04 Access. The Department, Covenantor, and their contractors and agents shall have reasonable right-of-entry and access to the Property for inspection, monitoring, testing, sampling and other activities consistent with the purposes of this Covenant as deemed necessary by the Department to protect the public health and safety or the environment and oversee any required activities.

ARTICLE V

IMPLEMENTATION AND ENFORCEMENT

5.01 Implementation. Owner shall submit an annual report detailing compliance with Article IV of this Covenant, including an annual inspection, and check of county and city records. The submission of an annual report containing this information, as outlined in the MOA by FORA and the Jurisdictions, shall satisfy this requirement.

5.02 Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Owner or Occupant modify or remove any Improvements ("Improvements")

herein shall include, but are not limited to, all buildings, roads, driveways, and paved parking areas, water wells, and surface impoundments) constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions against the Owner or Occupant as provided by law.

ARTICLE VI

VARIANCE, TERMINATION AND TERM

6.01 Variance. The Covenantor, any Owner or, with the Owner's written consent, any Occupant of the Property, 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. The Department shall allow the U.S. EPA and the Covenantor an opportunity to comment, before any such variance is effective.

6.02 Termination. The Covenantor, any Owner and/or, with the Owner's written consent, any Occupant of the Property, or any portion thereof, may apply to the Department for a termination of the 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 Health and Safety Code Section 25234. The Department shall allow the U.S. EPA and the Covenantor an opportunity to comment before any such termination is effective.

6.03 Term. Unless ended in accordance with the termination paragraph above, by law, or by the Department exercise of its discretion, this Covenant shall continue in perpetuity.

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 State of California References. All references to the State of California and the Department include successor agencies/departments or other successor entity(ies) and delegated agencies.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Monterey within ten (10) days of the Covenantor's receipt of a fully executed original and prior to transfer of the Property from the Department of the Army to another Owner.

7.04 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:

To Covenantor: Director, Fort Ord Office
Army Base Realignment and Closure
P.O. Box 5008
Presidio of Monterey, CA 93944-5008

To Department: Supervising Hazardous Substances Engineer I
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
Sacramento Office
8800 Cal Center Drive
Sacramento, CA 95826-3200

To U.S. EPA: Chief, Federal Facility and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, Mail Code: SFD-8-3
San Francisco, CA 94105-3901

To FORA: Executive Officer
Fort Ord Reuse Authority
100 12th Street
Marina, CA 93933-6006

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.

7.05 Partial Invalidity. If any provision of this Covenant 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 herein.

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

7.07 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.

7.08 Statutory References. All statutory references include successor provisions.

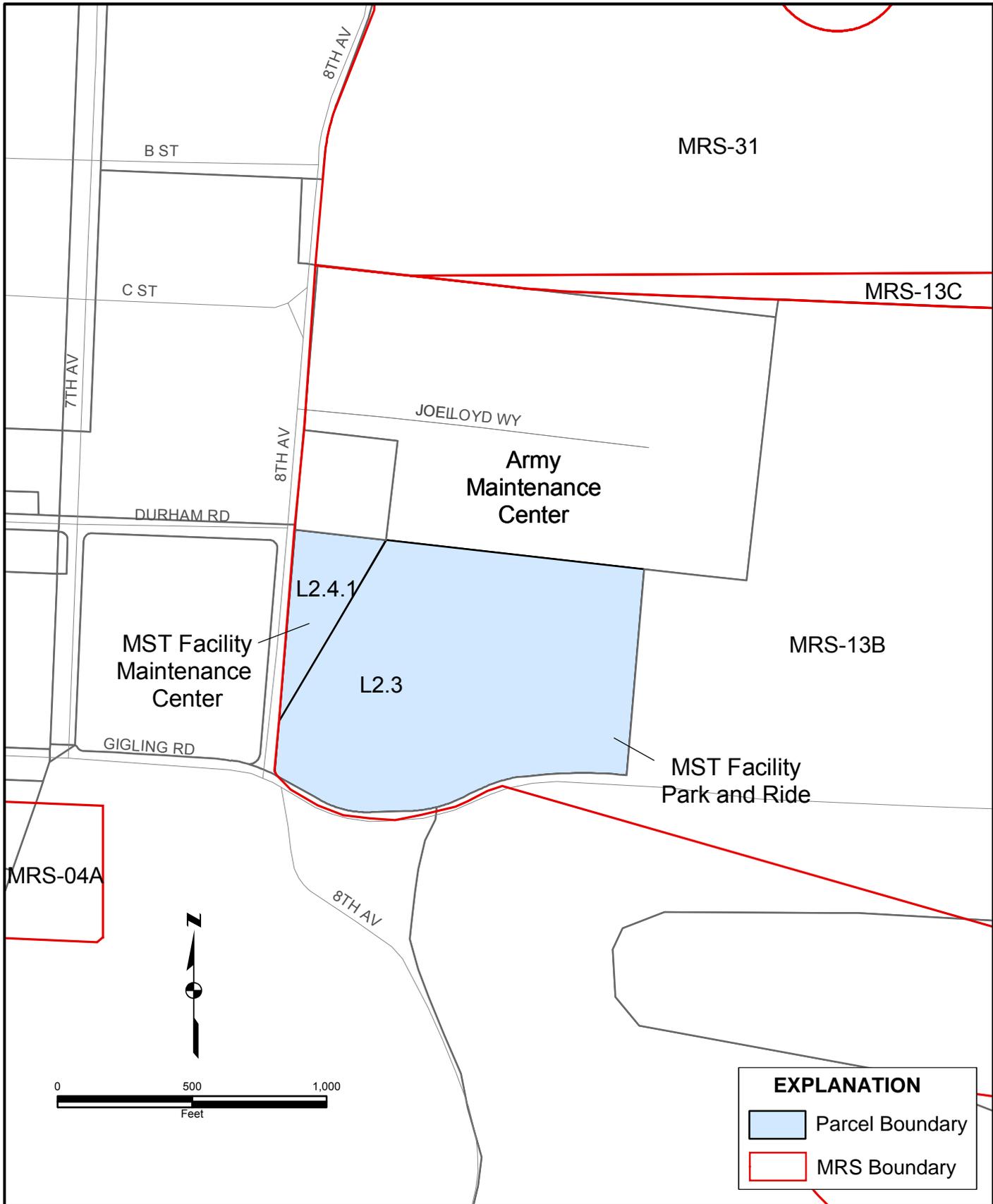
7.09 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

{Signatures follow }

EXHIBIT A

Plates showing the locations of parcels to be restricted by this covenant and the locations of Munitions Response Sites.

EXHIBIT A



Location Map, Parcels L2.3 and L2.4.1
 Covenant to Restrict Use of Property
 Monterey-Salinas Transit - MEC

EXHIBIT

A

EXHIBIT B

Legal descriptions and records of survey of the parcels restricted by this covenant.

Notes to Exhibit B:

1. The Covenantor intends to transfer the parcels to the Fort Ord Reuse Authority (FORA).
2. FORA intends to transfer the parcels to the Monterey-Salinas Transit (MST).

EXHIBIT B

EXHIBIT C

County Code Chapter 16.10, titled “*Digging and Excavation on the Former Fort Ord*”. Chapter 16.10 prohibits excavation, digging, development or ground disturbance of any type that involves the displacement of ten (10) cubic yards or more of soil on the former Fort Ord without a permit.

EXHIBIT C

Exhibit C – Monterey County Code Chapter 16.10

Chapter 16.10 DIGGING AND EXCAVATION ON THE FORMER FORT ORD

- 16.10.010 Purpose and intent.
- 16.10.020 General.
- 16.10.030 Applicability.
- 16.10.040 Excavation and digging restrictions.
- 16.10.050 Permit requirements.
- 16.10.060 Permit procedure.
- 16.10.070 Term of permit.
- 16.10.080 Exceptions to permit conditions.
- 16.10.090 Performance bond.
- 16.10.100 Amendment to permits.
- 16.10.110 Appeals.
- 16.10.120 Notification to property owners and other land users.
- 16.10.130 Revision of Chapter.

16.10.010 Purpose and intent.

The United States Army (Army) is in the process of transferring various parcels of the former Fort Ord military installation (Fort Ord) to the County or to other entities within the County's land use jurisdiction. Some parcels of the former Fort Ord were contaminated with unexploded ordnance and explosives (UXO), which is a hazardous waste. The Army will not transfer those parcels until it has cleared those parcels of UXO to its standard. Even following the Army's completion of UXO response activities, it is possible that some UXO materials may remain on those parcels. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) has statutory responsibility to oversee cleanup of releases of hazardous substances, which includes hazardous waste. DTSC cannot certify that all UXO has been cleared and it will require a land use covenant to be recorded with the Monterey County Recorder on those parcels to provide additional controls and restrictions to protect the public health and safety. The County will also enter into an Agreement with DTSC to provide additional safety measures and reporting. (Ord. 5012 § 1 (part), 2005)

16.10.020 General.

The Board of Supervisors finds and determines that those properties formerly included within the Fort Ord military installation that are suspected of containing UXO require special standards and procedures for digging and excavation in addition to those contained in the Building Code, to ensure that:

- A. Neither digging or excavation nor development of such properties occurs until ordnance or explosive remediation thereon is completed;
- B. Potential purchasers or developers of sites which may contain UXO and those persons whose work at such sites includes disturbing soil, are aware of the potential that UXO may be located on these properties and are aware of the requirements for UXO precautions prior to any digging, excavation or ground disturbance thereon; and
- C. DTSC should be continuously involved in the establishment of controls for those properties because it has statutory oversight responsibility with respect to hazardous substance response actions. (Ord. 5012 § 1 (part), 2005)

16.10.030 Applicability.

A. The Board of Supervisors, with the concurrence of DTSC, hereby designates all real property within the County's land use jurisdiction which was formerly part of Fort Ord and which have been identified in the Archives Search Report and supplement, dated 1997, or otherwise identified, as the possible location of unexploded ordnance or explosives as an Ordnance Remediation District (hereafter "district"). All such

Exhibit C – Monterey County Code Chapter 16.10

districts are defined as those areas of the unincorporated portions of the former Fort Ord, excepting therefrom the “Track 0” parcels as identified in the *Finding of Suitability to Transfer, Track 0 Parcels, Former Fort Ord, California* document, dated May 2003. The County shall notify DTSC of any change in the permitted land uses in any district within thirty (30) days after it adopts any change.

B. The regulations in this Chapter shall apply in all districts and shall be in addition and subject to all provisions of the County Code, including Titles 16, 18 and 21. (Ord. 5012 § 1 (part), 2005)

16.10.040 Excavation and digging restrictions.

It shall be unlawful for any person, including utilities, to engage in any of the following activities on any property located within a district unless that person is acting pursuant to a valid excavation permit (hereafter “permit”) issued pursuant to this Chapter: excavation, digging, development or ground disturbance of any type that involves the displacement of ten (10) cubic yards or more of soil. (Ord. 5012 § 1 (part), 2005)

16.10.050 Permit requirements.

An owner or user of real property located within a district who desires to conduct the activities described in Section 16.10.040 shall apply to the Building Official for a permit. The application shall be on a form approved by the County, may be combined with an application for grading pursuant to County Code Chapter 16.08, shall be signed by the permit applicant and all owners of each parcel of property on which excavation will be done, and shall contain the following information:

- A. Six copies of a description of any previous UXO excavation or removal activity conducted on the property whose soil is proposed to be excavated, moved or graded;
- B. Six copies of a description of the property where soil is proposed to be excavated, moved or graded. The description shall include a drawing with dimensions to a scale which sets forth the size and details of all proposed excavation activity, including any proposed cut and fill, trenching, well drilling, mineral excavation, post hole drilling, or other activity of any sort whenever the applicant proposes to do either of the following: (1) disturb ten (10) cubic yards or more of soil; or (2) disturb soil in a manner inconsistent with restrictions placed on the property by the Army or as noted on the district map;
- C. Six copies of a statement that the person submitting the application acknowledges liability for removing all detected unexploded ordnance and explosives in accordance with this Chapter and the permit;
- D. Six copies of a statement by the person submitting the application that they have, within the preceding twelve (12) months, delivered a copy of the notice to everyone whose work at the property described in Subsection 16.10.050(B) includes disturbing soil;
- E. The expected completion date of the activities authorized by the permit;
- F. Any other information which the Building Official may require as pertinent to the determination of the adequacy of the proposed plan;
- G. Payment of the permit fee, as established by the Board of Supervisors, at the time of filing the application for the permit. (Ord. 5012 § 1 (part), 2005)

16.10.060 Permit procedure.

The Building Official shall review the permit application and shall approve the permit unless evidence is available which indicates that the proposed grading or excavation will create an undue risk to the health and safety of the public at large. Prior to acting on any such application, the Building Official, in his/her sole discretion, may set and conduct a public hearing for the purpose of receiving comments on the proposed grading and excavation. Except as otherwise indicated in Section 16.10.080, any permit issued hereunder shall be subject to the following conditions:

Exhibit C – Monterey County Code Chapter 16.10

- A. All excavation and grading shall be performed solely in accordance with the permit approved and issued by the County.
- B. Prior to movement of any soil on any property located within a district, the permittee or designee shall personally deliver to each person who intends to work on the property described in the permit the Safety Alert—Ordnance and Explosives at former Fort Ord, as prepared by the Directorate of Environmental and Natural Resources Management at the Presidio of Monterey, or its successor document, and explain to each such person the information set forth in that notice.
- C. The permittee may not move or disturb soil unless the permittee is in compliance with the requirements placed on the property by an Agreement executed between the County, Redevelopment Agency, FORA and DTSC. Said Agreement shall, at a minimum, include OE construction support (“Construction Support”) and shall be attached to and become a part of any permit issued pursuant to this Chapter.
- D. The permittee shall cease soil disturbance activities upon a discovery of any suspected unexploded ordnance. The permittee shall notify the Monterey County Sheriff, Directorate of Law Enforcement at the Presidio of Monterey, the Army and DTSC of any suspected unexploded ordnance discovered during any excavation or soil removal immediately upon discovery. The permittee shall coordinate appropriate response actions with the Army and DTSC.
- E. No later than thirty (30) days following the completion of the permitted soil disturbance activity, the permittee shall prepare and file with the Building Official, the Army and DTSC an After Action Report that shall state whether and where UXO was detected and the extent and depth of UXO response actions undertaken and completed on the property that is the subject of the permit. The After Action Report shall be in the form provided in Exhibit “A” and shall include site maps to illustrate the information contained in the report. All After Action Reports prepared and filed in accordance with this Chapter shall be deemed public records.
- F. In consideration for the issuance of a permit and project approval, permittee shall defend at its sole expense any action or proceeding brought against the County and its Agents, Officers, and employees because of the approval of said permit. In further consideration for the issuance of a permit and project approval, the permittee shall indemnify and hold harmless from any liability the County and its agents, officers and employees and reimburse the County for any expenses incurred resulting from or in connection with the approval of the project including any claim, suit or legal proceeding and any and all related litigation costs, court costs, and attorneys’ fees which the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the permittee of its obligations under this Subsection.
- G. The Building Official shall mail a notice of permit approval to the Army, DTSC, and all owners of property within three hundred (300) feet of the real property that is the subject of the permit application. (Ord. 5012 § 1 (part), 2005)

16.10.070 Term of permit.

Every permit issued by the Building Official under the provisions of this Chapter shall expire if the work authorized by such permit is not commenced within one hundred twenty (120) days from the date of such permit, or if the work authorized by such permit is commenced and then suspended or abandoned for a period of thirty (30) days, unless such suspension is approved by the Building Official. Before such work can be recommenced, a new permit shall first be obtained, and the fee therefor shall be as established from time to time by the Board of Supervisors for a new permit for such work, provided no changes have been made or will be made in the original plans and specification for such work. (Ord. 5012 § 1 (part), 2005)

16.10.080 Exceptions to permit conditions.

Following consultation with and approval by DTSC, the Board of Supervisors may, upon a finding that the requirements of Section 16.10.060(C) are no longer necessary, designate by ordinance or resolution any district as a Limited Control District and/or no longer subject to the provisions of this Chapter. The holder

Exhibit C – Monterey County Code Chapter 16.10

of any permit issued for any Limited Control District shall not be subject to Section 16.10.060(C). (Ord. 5012 § 1 (part), 2005)

16.10.090 Performance bond.

Upon a finding by the Building Official that a permit should be issued for excavation or grading on the proposed site, a surety bond, in the form prescribed by the Monterey County Code Section 16.08.290, conditioned upon the faithful performance and completion of the permitted excavation activity, shall be filed with the County. Such surety shall be executed in favor of the County and shall be maintained in an amount prescribed by the Building Official sufficient to ensure the completion of the ordnance remediation and excavation of the site as prescribed in the approved permit. (Ord. 5012 § 1 (part), 2005)

16.10.100 Amendment to permits.

Request for amendments to an approved excavation permit may be submitted to the Building Official at any time, detailing proposed changes from the original permit. Deviations from the original permit shall not be undertaken until such amendment has been approved by the County in writing. Amendments to an approved permit shall be approved by the same procedure as prescribed for the approval of the original excavation permit. (Ord. 5012 § 1 (part), 2005)

16.10.110 Appeals.

Any person aggrieved by any determination of the Building Official in exercise of the authority granted in this Chapter shall have the right to appeal pursuant to Monterey County Code Sections 16.08.460 through 16.08.510, inclusive. (Ord. 5012 § 1 (part), 2005)

16.10.120 Notification to property owners and other land users.

A. The County shall notify the owners of property designated as Ordnance Remediation Districts, and those utilities known to be providing service within the County, of the requirements of this Chapter and provide those persons with the Safety Alert—Ordnance and Explosives at Former Fort Ord, as identified in Section 16.10.060(B), above. The County shall annually notify the owners of said property as shown on the equalized tax rolls of the requirements of this Chapter and provide those persons with a copy of the notice. Failure of any owner, occupant or user of such land to receive said notification shall not relieve them from responsibility for compliance with this Chapter.

B. All owners, occupants or users of land subject to this Chapter, including utilities, shall notify any subsequent owners, assigns, lessees or users of such land of the requirements of this Chapter. Notification shall be made prior to transfer of the property in question.

C. All persons identified in Subsection 16.10.120(A) above shall deliver, at least annually, a copy of the notice to everyone whose work at UXO sites includes disturbing soil and shall explain the contents thereof to those persons. (Ord. 5012 § 1 (part), 2005)

16.10.130 Revision of Chapter.

This Chapter shall not be revised without prior written notice to the DTSC. (Ord. 5012 § 1 (part), 2005)