

RECORDING REQUESTED BY
FIRST AMERICAN TITLE

COVENANT

3

0131-61930002

RECORDING REQUESTED BY:
City of Alameda Base Reuse
Department 2263
Santa Clara Avenue
Alameda, California 94501
Attention: Chief Operating
Officer - Alameda Point



2013199836

06/06/2013 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 0.00



19 PGS

WHEN RECORDED, MAIL TO:

Department of Toxic Substances
Control
700 Heinz Avenue
Berkeley, CA 94710
Attention: James Fyfe

A23
19
RR

This document is exempt from payment of
a recording fee pursuant to California
Government Code §27383

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Parcel No. ALA-36-EDC (partial) – DTSC Site Code 201971)

This Covenant and Agreement (Covenant) is made by and between the City of Alameda (City or the Covenantor), the current owner of certain property, situated in the City of Alameda, County of Alameda, State of California, described and depicted in Exhibit "A" (the Property), and the Department of Toxic Substances Control (Department). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonable 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 California Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, the use of the Property be restricted as set forth in this Covenant; and that the Covenant shall conform with the requirements of the California Code of Regulations, title 22, section 67391.1.

ARTICLE I STATEMENT OF FACTS

1.1 Property Location. The Property, as depicted on Exhibit "A", is made up of approximately 20.38 acres, and is located within the Former Alameda Point Naval Air Station (NAS Alameda), Alameda, California. The hazardous substances of concern are located under the Property within the marsh crust and subtidal area (defined below), as depicted on Exhibit "B".

1.2 Site History. The "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 generally continuous underground layer, at depths of 4 to 20 feet bgs, that extends bayward of the original mean high tide line of Alameda Island, before filling, throughout the intertidal area that was filled. The "former subtidal area" is a layer of sediment that may be contaminated with semivolatile organic compounds (SVOC) that was deposited on tidal flats at the western end of NAS Alameda rather than on the marshes.

The marsh crust is located under two adjoining naval installations in Alameda: Fleet and Industrial Supply Center Oakland, Alameda Facility/Alameda Annex (Annex), and NAS Alameda. The former subtidal area is located on NAS Alameda west of the

marsh crust. NAS Alameda was listed on the U.S. Environmental Protection Agency (U.S. EPA) National Priorities List (NPL) under CERCLA in July 1999. However, the NPL listing specifically excluded the marsh crust and former subtidal area and the Annex.

1.3 Decision Document. The "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" (RAP/ROD) was approved and finalized February 2, 2001. The RAP/ROD requires environmental restrictions in the Navy deed and a separate covenant to restrict use of Property between the Department and City at the time of transfer. The Annex property transferred from the Navy to the City in 2000, and at that time, and in accordance with the RAP/ROD requirements, the City recorded a covenant to restrict use. The NAS Alameda property transferred from the Navy to the City on June 4, 2013, and this Covenant is fulfilling the requirements in the RAP/ROD.

1.4 City Excavation Ordinance. The City adopted City of Alameda Ordinance No. 2824 on February 15, 2000, that prohibits engaging in any excavation below specified threshold depths 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. The City will directly implement and enforce the Ordinance.

1.5 Basis for Covenant. As a result of the presence of hazardous substances in the Property, which are also defined as hazardous materials as defined in California Health and Safety Code section 25260, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for the Property. The Department has also concluded that the Property, when used in compliance with this Covenant, does not

present an unacceptable risk to present and future human health or safety or the environment.

ARTICLE II
DEFINITIONS

2.1 Department. "Department" means the Department of Toxic Substances Control and includes its successor agencies, if any.

2.2 Excavation ordinance. "Excavation ordinance" means City of Alameda Ordinance No. 2824, which is incorporated herein by this reference.

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

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

2.4 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.

2.5 Owner. "Owner" means the Covenantor, and any successor in interest including any heir and assign, who at any time holds title to all or any portion of the Property.

2.6 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 RAP/ROD or other applicable remedial decision document. The current Threshold depth is depicted on Exhibit "B".

ARTICLE III
GENERAL PROVISIONS

3.1 Runs with the Land. This Covenant sets forth 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, 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 Central Valley Water Board, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.2 Binding upon Owners/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 for any portion of the Property.

3.4 Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and 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 or by administrative order.

3.5 Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and 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.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.1 Prohibited Activities. The following activities are prohibited on the Property:

Engaging in any excavation below the threshold depth without (a) a City excavation permit; or (b) 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. Owner'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.

4.3 Access For Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

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.

ARTICLE VI
VARIANCE, REMOVAL AND TERM

6.1 Variance. Any person may apply to the Department for a written variance from one of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2 Removal. Any person may apply to the Department to remove any of the restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3 Term. Unless ended in accordance with paragraph 6. 2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.1 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 thereof, to the general public or anyone else for any purpose whatsoever.

7.2 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within 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: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) three business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

City of Alameda
Base Reuse Department
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: Chief Operating Officer—Alameda Point

To Department:

California Environmental Protection Agency
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710
Attention: James R. Fyfe, P.E., Remedial Project Manager

Any party may change its address or the individual to whose attention a Notice is to be sent by giving advance 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 Statutory References. All statutory or regulatory references include successor provisions.

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

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: City of Alameda

By: 

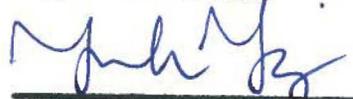
John Russo *AKA John A Russo*

Title: _____

City Manager

Date: ~~5/30/13~~ 6/4/13

Approved as to Form



Farimah Faiz
Sr. Assistant City Attorney

Department of Toxic Substances Control:

By: 

Karen M. Toth, P.E.

Title: _____

Unit Chief

Date: 05/30/2013

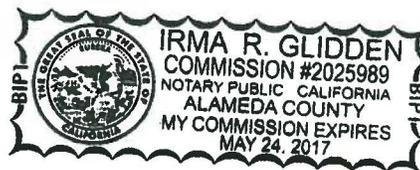
State of California
County of Alameda

On June 4, 2013 before me, Irma R. Glidden, a Notary Public, personally appeared John A. Russo who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

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.

Signature Irma R. Glidden (Seal)



State of California}
County of Alameda}

On May 30, 2013 before me, Irma R. Glidden, a Notary Public,
(date)

personally appeared Karen M. Toth, who 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 person, or the entity upon behalf of which the person 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.



Signature *Irma R. Glidden* (Seal)

EXHIBIT "A"
LEGAL DESCRIPTIONS AND PLATS OF PROPERTY

**LEGAL DESCRIPTION
MARSH CRUST AREA 1
ALAMEDA, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERN LINE OF SAID PARCEL 1, SAID POINT BEING THE SOUTHERN TERMINUS OF THAT CERTAIN COURSE DESIGNATED AS, "NORTH 17°07'59" EAST 413.71 FEET", ON SHEET 6 OF 12 OF SAID RECORD OF SURVEY;

THENCE, FROM SAID POINT OF COMMENCEMENT, LEAVING SAID NORTHERN LINE, SOUTH 17°07'59" WEST 17.22 FEET;

THENCE, SOUTH 72°52'01" EAST 1,531.58 FEET;

THENCE, SOUTH 04°02'03" WEST 374.46 FEET;

THENCE, SOUTH 05°11'36" WEST 361.92 FEET;

THENCE, NORTH 85°00'42" WEST 130.00 FEET;

THENCE, SOUTH 04°47'01" WEST 93.63 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, SOUTH 04°47'01" WEST 450.24 FEET;

THENCE, NORTH 85°07'10" WEST 85.13 FEET;

THENCE, SOUTH 04°50'40" WEST 168.73 FEET;

THENCE, NORTH 85°07'05" WEST 213.39 FEET;

THENCE, SOUTH 05°28'03" WEST 246.74 FEET;

THENCE, NORTH 85°16'41" WEST 733.60 FEET;

THENCE, NORTH 85°16'48" WEST 139.38 FEET;

THENCE, NORTH 08°51'12" EAST 43.21 FEET;

THENCE, NORTH 03°52'08" EAST 222.99 FEET;

THENCE, NORTH 04°06'21" EAST 344.17 FEET;
THENCE, NORTH 05°27'37" EAST 40.84 FEET;
THENCE, NORTH 52°30'17" EAST 75.00 FEET;
THENCE, NORTH 67°44'39" EAST 210.00 FEET;
THENCE, NORTH 77°34'35" EAST 150.00 FEET;
THENCE, NORTH 87°32'28" EAST 185.00 FEET;
THENCE, SOUTH 85°21'15" EAST 609.36 FEET TO SAID POINT OF BEGINNING.

CONTAINING 20.38 ACRES OF LAND, MORE OR LESS.

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3. DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY AT PAGE 14, ALAMEDA COUNTY RECORDS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

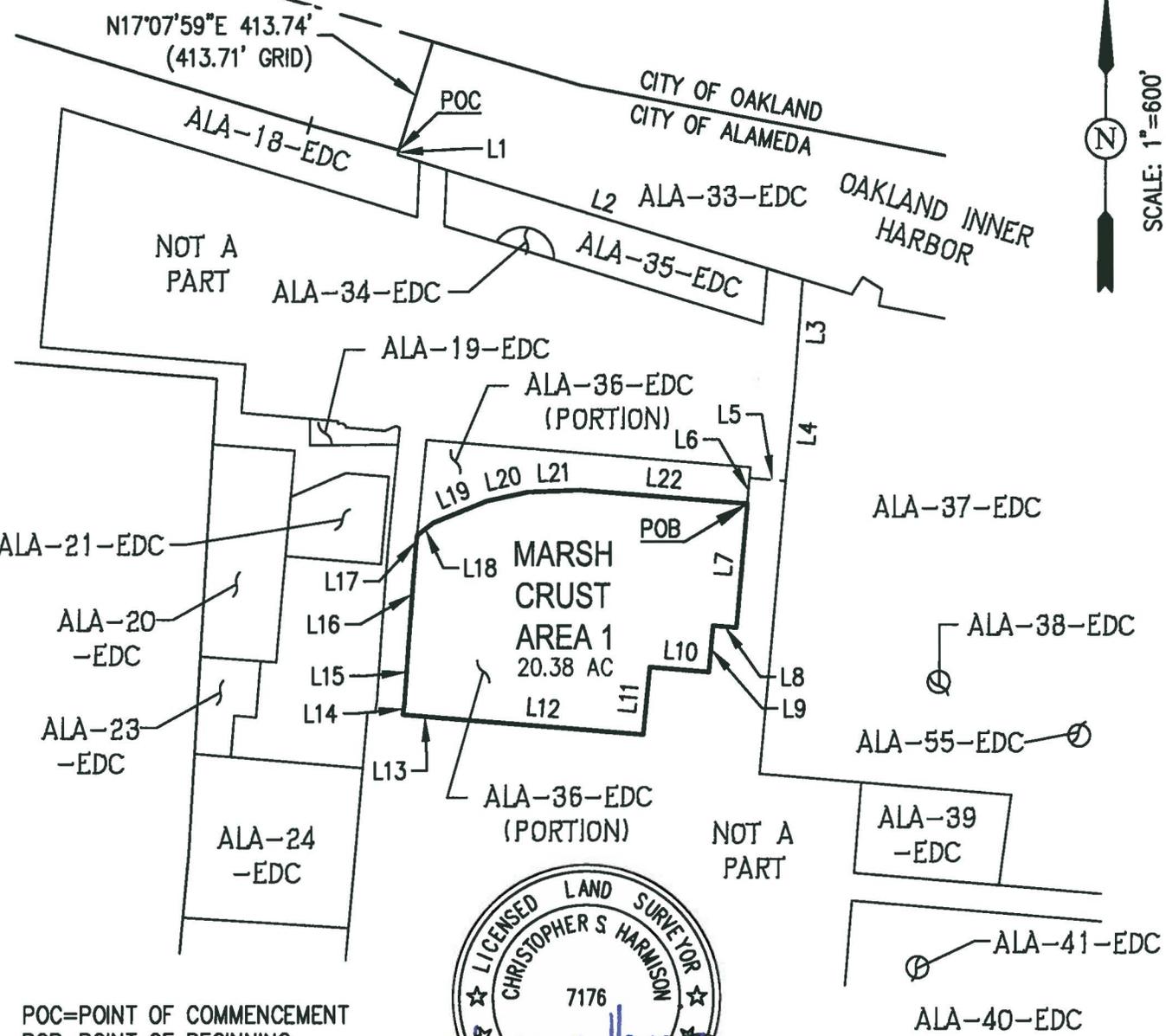
ALL PARCELS SHOWN HEREON ARE INTENDED TO LIE COINCIDENT TO ONE ANOTHER WITH NO GAPS OR OVERLAPS CREATED BY THIS DOCUMENT.

END OF DESCRIPTION

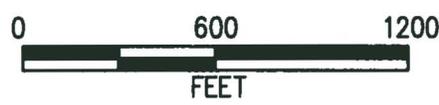


Christopher S. Harmison

CHRISTOPHER S. HARMISON, P.L.S.
L.S. NO. 7176



POC=POINT OF COMMENCEMENT
 POB=POINT OF BEGINNING



PLAT TO ACCOMPANY LEGAL DESCRIPTION

**MARSH CRUST AREA 1
 ALAMEDA, CALIFORNIA**

SEE SHEET 2 FOR TABLES

MAY 6, 2013

SHEET 1 OF 2

Carlson, Barbee, & Gibson, Inc.

CIVIL ENGINEERS SURVEYORS PLANNERS

6111 BOLLINGER CANYON ROAD, SUITE 150 SAN RAMON, CALIFORNIA 94583

TELEPHONE: (925) 866-0322 FAX: (925) 866-8575

LINE TABLE		
NO.	BEARING	LENGTH
L1	S17°07'59"W	17.22'
L2	S72°52'01"E	1531.58'
L3	S04°02'03"W	374.46'
L4	S05°11'36"W	361.92'
L5	N85°00'42"W	130.00'
L6	S04°47'01"W	93.63'
L7	S04°47'01"W	450.24'
L8	N85°07'10"W	85.13'
L9	S04°50'40"W	168.73'
L10	N85°07'05"W	213.39'
L11	S05°28'03"W	246.74'
L12	N85°16'41"W	733.60'
L13	N85°16'48"W	139.38'
L14	N08°51'12"E	43.21'
L15	N03°52'08"E	222.99'
L16	N04°06'21"E	344.17'
L17	N05°27'37"E	40.84'
L18	N52°30'17"E	75.00'
L19	N67°44'39"E	210.00'
L20	N77°34'35"E	150.00'
L21	N87°32'28"E	185.00'
L22	S85°21'15"E	609.36'

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3. DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY NO. 1816 (28 RS 14).

PLAT TO ACCOMPANY LEGAL DESCRIPTION

MARSH CRUST AREA 1
ALAMEDA, CALIFORNIA

MAY 6, 2013

SHEET 2 OF 2

Carlson, Barbee, & Gibson, Inc.

CIVIL ENGINEERS SURVEYORS PLANNERS

6111 BOLLINGER CANYON ROAD, SUITE 150 SAN RAMON, CALIFORNIA 94583

TELEPHONE: (925) 866-0322 FAX: (925) 866-8575

EXHIBIT "B"

FIGURE DEPICTING PROPERTY SUBJECT TO MARSH CRUST CRUP

LEGEND

- - - - - APPROXIMATE SHORELINE
- ▭ PHASE 1 CONVEYANCE BOUNDARY (UNSUBMERGED AREAS)

PROPERTY SUBJECT TO MARSH CRUST CRUP (287 AC±)

-  EXCAVATION PERMIT REQUIRED FOR EXCAVATIONS BELOW MEAN HIGHER HIGH TIDE
-  EXCAVATION PERMIT REQUIRED FOR EXCAVATIONS BELOW 5 FEET
-  EXCAVATION PERMIT REQUIRED FOR EXCAVATIONS BELOW 10 FEET
-  EXTENT OF FORMER SUBTIDAL AREA
-  EXTENT OF FORMER ISLAND 1865 (RADBRUCH 1957)

ALAMEDA POINT EXHIBIT B

CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA
DATE: MAY 22, 2013 SCALE: 1" = 1,500'



Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS

2833 CAMINO RAMON, SUITE 350 (925) 886-0322
SAN RAMON, CALIFORNIA 94583 FAX (925) 886-6576

