

CONSENT AGREEMENT

Between

Oakland Base Reuse Authority,

City of Oakland acting by and through the Oakland Redevelopment Agency,

and

State of California

California Environmental Protection Agency

Department of Toxic Substances Control

Concerning

Oakland Army Base

Oakland, California

In the matter of:)
Oakland Base Reuse Authority) CONSENT AGREEMENT
Oakland Redevelopment Agency)
Oakland Army Base)
Oakland, California)

I. INTRODUCTION

1.1 Parties. The parties to this Consent Agreement are the California Environmental Protection Agency, Department of Toxic Substances Control (“DTSC”), the Oakland Base Reuse Authority (“OBRA”), a joint powers authority, and the City of Oakland, a municipal corporation, acting by and through the the Oakland Redevelopment Agency (“ORA”), a redevelopment agency. OBRA and ORA are collectively referred to herein as “the City”; and DTSC and the City are collectively, “the Parties.”

1.2 Site. This Consent Agreement (the “Agreement”) applies to that portion of the Oakland Army Base (“OARB” or the “Site”), located in Alameda County, California that will be transferred as a no-cost Economic Development Conveyance to the City by the Army under early transfer authority pursuant to 42 U.S.C. § 9620(h)(3). The Site is described in Exhibit A, and is further described as the Area Covered by Environmental Services (“ACES”), as that term is defined in the Environmental Services Cooperative Agreement (“ESCA”) between the United States of America, acting by and through the Department of the Army (“Army”) and the City (attached at Exhibit B), which is intended to be executed substantially concurrent with this Agreement. The Site consists of 363.5 acres, which includes 313.6 acres of onshore dry land and 49.9 acres of offshore sediments.

1.3 Site History. The OARB comprises approximately 425 acres. Much of the OARB was originally tidal flats or shallow open water. During the first half of the 1900s, the area was filled to create the land subsequently acquired by the Army in 1941. The OARB served as a major Army cargo port and warehousing facility from 1941 until it was closed under the Base Realignment and Closure program on September 30, 1999. Army activities supported the OARB’s primary military mission as a distribution center and included maintaining and fueling railroad locomotive engines and trucks that transported cargo, draining fluids from vehicles for overseas shipment, and repairing and servicing vehicles, equipment, and base facilities.

1.4 Purposes. The purposes of this Agreement are to bind the City to enter into environmental restrictions for the Site as necessary to protect human health and the environment, and to require the remediation of the Site by the City in accordance with the Oakland Army Base Remedial Action Plan (“RAP”) and associated Risk Management Plan (“RMP”), approved by DTSC on September 26, 2002, consistent with the National Contingency Plan, as amended

("NCP") (40 Code of Federal Regulations ("C.F.R.") part 300), California Health and Safety Code (Health and Safety Code), division 20, chapters 6.5 and 6.8, as amended, and other applicable state laws and regulations. The City and DTSC entered into a Consent Agreement on September 27, 2002. On April 9, 2003, the City requested minor modifications to the Consent Agreement dated September 27, 2002. DTSC modified the September 27, 2002 Consent Agreement and made other minor clarifications and corrections. This Agreement remains substantively the same as the September 27, 2002 Consent Agreement and supersedes that document.

1.5 Jurisdiction. Resource Conservation and Recovery Act ("RCRA") sections 3006 and 6001 (42 U.S.C. §§ 6926, 6961), and chapters 6.5 and 6.8 of division 20 of the Health and Safety Code, authorize DTSC to enter into this Agreement.

II. FINDINGS OF FACT AND STATEMENTS OF INTENT

2.1 Introduction. The Army plans to transfer fee title of the Site to the City. Authority for the Army to transfer the Site to the City is derived from the authority of the Department of Defense to dispose of real and personal property at military facilities no longer required for the Defense of the United States of America as contained in the Defense Base Closure and Realignment Act of 1990, Public Law 101-510 (10 U.S.C. § 2687, as amended).

The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 U.S.C. §§ 9601 et seq.) requires a covenant indicating that all remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the Site has been taken prior to transfer of the Site. In appropriate circumstances, a deferral of this covenant is authorized under Section 120(h)(3)(C) of CERCLA, where the governor of the state in which the property is located must make a finding that the property is suitable for an early transfer. In order to expedite reuse, the Army will request the approval of a CERCLA covenant deferral for the Site from the Governor of the State of California.

2.2 Early Transfer Requirements. The Army designated OARB for closure under the Base Closure and Realignment Act of 1990. OARB was included on the Base Realignment and Closure ("BRAC") IV closure list of October 1995 and was closed on September 30, 1999. Early transfer of most of OARB, including the Site, was requested by the Army and the City in a letter to DTSC dated March 7, 2000. To comply with the U.S. Department of Defense's guidance (1998) for obtaining approval for the early transfer the Army must prepare a Finding of Suitability for Early Transfer ("FOSET"). The FOSET document consists of Army findings and determinations of the status of the environmental investigations on the Site.

The Governor of the State of California must approve a deferral request for the early transfer of a federal facility. For the Governor to approve an early transfer deferral request, the Governor must make findings pursuant to section 120(h)(3)(C) of CERCLA that, (i) the property is suitable for transfer for the intended use, (ii) the intended use is consistent with protection of human health and the environment, (iii) the deed or other agreement governing the transfer contains the specific assurances (described below), (iv) notice of the early transfer has been

provided, and (v) the early transfer will not substantially delay any necessary response action. Specific assurances, which shall be provided in the deed or other agreement that will govern the transfer include providing, (a) for any necessary restrictions on the use of the property to ensure protection of human health and the environment, (b) that there will be restrictions on use necessary to ensure that required remedial actions will not be disrupted and that all necessary response actions will be taken and identifying the schedules for investigation and completion thereof, and (c) that the appropriate budget request is made by the federal agency to adequately address the schedule for investigation and completion of all necessary response action, subject to congressional authorization and appropriations.

2.3 Environmental Services Cooperative Agreement.

(a) In anticipation of the early transfer of the Site, the Army and the City will, substantially concurrent with the execution of this Agreement, enter into the ESCA pursuant to 10 U.S.C. Section 2701 and 31 U.S.C. Section 6305.

The ESCA will provide that the City will cause to be performed the environmental services necessary to achieve regulatory closure as required by the RAP, except for environmental services related to any condition associated with the following types of defined Army-Retained Conditions: radiological materials; chemical and biological warfare agents; unexploded and abandoned ordnance; and natural resource injuries (except to the extent such injuries are a result of the City's activities on the property). Nothing in the ESCA shall diminish or affect in any manner the obligations of the Army or any other federal agency with respect to the Site, including but not limited to the Army's obligations pursuant to section 120(h)(3)(A)(ii)(II) to conduct any additional remedial action found to be necessary after the date of transfer.

(b) DTSC acknowledges that during the period of time that the Site is still owned by the United States, the City will need approval from the Army for Site access and that the City may not perform actions during that period that are inherently governmental, including the selection of the remedy and acting on behalf of the Army before DTSC in a manner that could incur a legal obligation on the part of the Army. The City shall not be responsible for such inherently governmental functions nor for any matters arising from the Army's exercise of such functions or arising from the Army's denial of Site access to the City. The Parties agree that the RAP and RMP are consistent with this Section 2.3(b).

2.4 Nature and Extent of Contamination.

(a) Army Activities to Date. Prior to this Agreement, the Army took various actions, including but not limited to, various preliminary assessments and site inspections ("PA/SIs"). As a result of these PA/SIs and other preliminary work, the Army made determinations regarding the need for further investigation of specific sites under the Army's Installation Restoration Program. Any areas within the PA/SI not identified as a site were presumed by the Army to not require any further investigation. In addition, for those sites identified by the Army, the Army undertook partial remedial investigations, feasibility studies,

and remedial actions. DTSC agrees that the actions completed by the Army and the City, to this point, are sufficient to allow the City to implement the RAP and RMP for the Site.

(b) Current Designations. The Site, as described in the RAP, consists of two subsets of locations:

(i) Seven locations (“RAP sites”) where remediation work is proposed to be performed prior to the anticipated redevelopment of the Site, consisting of the areas generally described as the former Oil Reclaiming Plant/Building 1 Area; volatile organic compounds (“VOCs”) in groundwater at the eastern end of Building 807, near Buildings 808, 823, 99 and 828; benzene and MTBE in groundwater near former underground storage tanks 11A/12A/13A near Building 828; the Building 991 Area; and the Building 99 Area.

(ii) Numerous other locations throughout the OARB where underground storage tanks, incidental vehicular maintenance, railyard, and other activities involving the handling of hazardous materials occurred (“RMP locations”), and where hazardous substances or petroleum have been or may be discovered and will be remediated, as may be necessary in accordance with the RAP or RMP, during the course of planned redevelopment at the Site. The whole of the Site is subject to the requirements of the RMP, and is accordingly designated as an “RMP Implementation Area”.

(c) Descriptions of the RAP sites and RMP locations are summarized in Exhibit E, and described in greater detail in the RAP included as Exhibit C.

III. RESPONSE ACTIONS PROCESS

3.1 Generally. The parties agree that the RAP and RMP shall govern the overall response action process for RAP sites, RMP locations and the RMP Implementation Area, and that the City shall comply with the RAP and RMP with respect to RAP sites, RMP locations and RMP Implementation Area. In the event that unknown contamination is discovered and cannot be appropriately remediated using the remedial technologies retained in the RAP, the City shall evaluate such new contamination and responses to that contamination pursuant to the NCP and DTSC’s approval. The City shall provide, upon DTSC’s request, all information necessary to facilitate DTSC’s preparation of documents pursuant to the California Environmental Quality Act.

3.2 Risk Management Plan. The RMP, as may be amended, is incorporated as part of and included as an appendix to the RAP. The first purpose of the RMP is to determine and implement presumptive remedies for locations with standard contaminant profiles and site conditions. The remedy implementation features of the RMP would be applied at the known RMP locations as identified in the RAP, and would be applied to unknown RMP locations as they are identified during redevelopment of the Site. The second purpose of the RMP is to establish site identification and risk management protocols, such as institutional controls, to run with the land and to be implemented at unknown or newly discovered RMP locations as they are identified in the future at the Site. DTSC requires that institutional controls be promulgated in

the Covenant (described in Section 3.6) signed by DTSC and the City. Upon execution of the Covenant, the RMP, as may be amended, would be incorporated by reference in, and become enforceable as part of the Covenant.

3.3 Remediation Schedule. Based on the foregoing, it is hereby agreed that the City will comply with the schedule included in the RAP. The City shall implement the remedies for the RAP sites within five (5) years after conveyance of the Site to the City, or in accordance with the schedules reviewed and approved by DTSC pursuant to Section 3.7 of this Agreement, and shall implement the removal and cover remedies for the RMP locations within ten (10) years after conveyance of the Site, or in accordance with the schedules reviewed and approved by DTSC pursuant to Section 4.6 of this Agreement, or unless DTSC otherwise consents in writing to an extension of such period, which consent shall not be unreasonably withheld.

In addition, the City shall submit a more detailed Remediation Schedule of activities to be conducted under this Agreement within ninety (90) days following the effective date of this Agreement. However, DTSC recognizes that some RMP locations are subject to considerations that are unknown at this time. Therefore, DTSC agrees that submittal of schedules for such locations may be deferred to a later date with the approval of DTSC. The Remediation Schedule shall include an introductory section, which will describe the detailed overall remediation strategy specific to the areas subject to this Agreement. The Remediation Schedule shall include a project Gantt chart with major and minor milestones for the remedies for all RAP sites and RMP locations. The City shall update the Remediation Schedule semi-annually or as required by DTSC. The Remediation Schedule shall specify the submittal of monthly progress reports to DTSC. The monthly progress report shall summarize the activities conducted in the past month and describe the planned activities in the following month.

3.4 Consistency with NCP. All work required to be performed under this Agreement shall be consistent with and based on the NCP, Health and Safety Code, division 20, chapters 6.5 and 6.8., as amended, applicable state laws and regulations, as amended, and other current and applicable United States Environmental Protection Agency (“U.S. EPA”) and DTSC guidance and standards. All terms and applicable guidance documents referred to in this Agreement are functionally equivalent and consistent with the terms and guidance required under the NCP (e.g., Remedial Action Plan is the equivalent of a Record of Decision).

3.5 Procedures for Discovery of Army-Retained Conditions.

(a) In the event the City discovers Army-Retained Conditions at the Site, the City shall notify DTSC of such conditions within thirty (30) days of receiving actual notice of such conditions, except that the City shall notify DTSC of the City’s discovery of UXO, biological warfare agents, chemical warfare agents, or radiological materials within twenty-four (24) hours of such discovery. As soon as reasonably practicable after such notice is provided, the City shall consult with the Army and DTSC regarding the actions that should be taken with respect to the Army-Retained Conditions. Except as otherwise provided in this Section 3.5, the City’s obligations under this Agreement do not extend to Army-Retained Conditions.

(b) If the Site or portion thereof within which Army-Retained Conditions are

discovered has not been certified pursuant to Section 3.11, the City may request that DTSC approve an amendment to this Agreement dividing the affected Site in a manner that separates the portion of the Site affected only by the Army-Retained Conditions from the remainder of the existing Site. In that event, the City shall have no obligations whatsoever under this Agreement for the separated-out area.

(c) If a portion of the Site affected by Army-Retained Conditions is not separated from the Site, the City's only obligation under this Agreement with respect to the Army-Retained Conditions shall be to incorporate by reference, in the documents for the Site submitted to DTSC by the City pursuant to this Agreement, the documentation prepared by the Army regarding the Army-Retained Conditions, except where DTSC determines, after meeting and conferring with the City and the Army, that certain data related to Army-Retained Conditions must be integrated into certain aspects of the City's documents, including but not limited to risk assessments. In making such determinations, DTSC shall avoid where feasible imposing an obligation to integrate data related to Army-Retained Conditions where such integration would impose additional remediation obligations with respect to the conditions for which the City is responsible under this Agreement.

(d) The City shall have no responsibility under this Agreement for attesting to the accuracy of any documentation regarding Army-Retained Conditions provided by the Army, nor shall the City be responsible for any matters arising from the Army's failure to provide adequate documentation regarding Army-Retained Conditions.

3.6 Covenant to Restrict Use of Property.

(a) DTSC has prepared, in consultation with the City and the Army, a Covenant to Restrict Use of Property, Environmental Restrictions (the "Covenant"), attached hereto in substantially final form as Exhibit D, that restricts and/or prohibits the following uses at the Site:

(i) Sensitive land uses, including, but not limited to, residential housing, schools, day-care facilities, hospitals and hospices are prohibited. DTSC may issue waivers to allow sensitive uses at sites where DTSC deems it appropriate. Waivers currently under consideration for the interim uses are described in Exhibit F. The waivers under consideration would be in effect for five years after conveyance.

(ii) The construction of groundwater wells and extraction of groundwater from new and existing wells for all purposes are prohibited. DTSC may issue written approval for environmental investigation, monitoring, and remediation. Construction dewatering activities shall be conducted pursuant to the RMP.

(b) The City is required to comply with the RAP and RMP provisions, which include provisions for soil and groundwater management, maintenance of existing cover or construction of new cover, mitigation measures during earthwork, management of below grade structures, etc.

(c) The City is required to submit annual certification to DTSC attesting to compliance with institutional controls.

(d) Pursuant to California Civil Code Section 1471(a)(3), DTSC has determined that the 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 at the Site.

(e) At the time of transfer of the Site to the City, DTSC and the City shall execute the Covenant, in substantially the same form as Exhibit D hereto, and the City shall cause that Covenant to be recorded as part of the close of escrow.

3.7 Remedial Design. Within ninety (90) days after conveyance of the Site from the Army to the City, or as otherwise agreed to in writing by DTSC, and in accordance with the RAP, the City shall submit to DTSC for review and approval a Draft Remedial Design and Implementation Plan (“RDIP”) for each RAP site identified in Exhibit C. The Draft RDIP for each RAP site will outline planned task elements and approaches and describe the overall projected schedule for submittal of the technical and operational plans for implementation of the RAP, which may include the following elements:

(a) Sampling plans as needed for pre-design definition of design criteria and other project constraints, including plans and schedules for any recommended on-site or off-site treatability testing;

(b) Summaries of key design criteria, unit process and sizing calculations, process diagrams constituting a Pre-design Memorandum to be completed and approved by the Parties prior to the start of detailed design;

(c) Preparation of technical plans and specifications for remedial design as defined below;

(d) General descriptions of equipment used to excavate, handle, and transport contaminated material (actual means and methods will be determined by the selected contractor(s) in accordance with the constraints provided in the final plans and specifications);

(e) A field sampling and laboratory analysis plan addressing sampling, if any, during implementation, and confirming achievement of the remedial action objectives of the RAP;

(f) A transportation plan identifying routes of travel and final destination of wastes generated and disposed;

(g) For groundwater extraction systems, if any are planned: aquifer test results, capture zone calculations, specifications for extraction and performance monitoring wells, and a plan to demonstrate that capture is achieved;

(h) A site-specific health and safety plan addressing the implementation activities to be prepared by the selected construction contractor(s) in accordance with the final plans and specifications;

(i) Identification of any necessary permits and agreements;

(j) An operation and maintenance plan including any required monitoring post-remediation; and

(k) A detailed schedule for implementation of the remedial action consistent with the schedule contained in the RAP, including procurement, mobilization, construction phasing, sampling, facility startup, and testing.

A Final RDIP shall be submitted to DTSC following completion of the above project elements and preparation of detailed plans and specifications. The City shall prepare the final plans and specifications for the Remedial Design (“RD”) of work or facilities to be constructed for remediation of each RAP site in accordance with the DTSC-approved schedule in the RDIP and following the guidance of the “Remedial Design/Remedial Action Handbook, EPA 540/R-95/059, June 1995”, as deemed relevant in consultation with DTSC. The RD for each RAP site will be submitted in accordance with the schedule provided in the respective Draft RDIP for each RAP site, unless modified by concurrence with DTSC based on conditions or delays encountered during the pre-design task elements.

3.8 Site Control Plan. The City shall submit for DTSC’s review and approval a Site Control Plan within ninety (90) days of the effective date of this Agreement. The purpose of the Site Control Plan shall be to identify measures designed to prevent unauthorized persons from entering onto portions of the Site where such entry could pose a threat to themselves or others or where such entry could interfere with the investigation or remediation activities at the Site. The plan shall set forth a schedule for implementation of such measures. The City shall implement the plan in accordance with that schedule. The City shall review the plan annually and revise it as required by DTSC.

3.9 Community Relations Plan. The City shall submit for DTSC’s review and approval a Community Relations Plan within ninety (90) days of the effective date of this Agreement. The Plan shall comply with all applicable regulations and guidance documents regarding Community Relations Plans. The City shall implement the plan in accordance with that schedule. The City shall review the plan annually and revise it as required by DTSC. Until the Community Relations Plan is approved, the City shall consult with DTSC as appropriate regarding any requirements applicable to communicating with the public and seeking public input regarding activities conducted pursuant to this Agreement.

3.10 Completion Report of RAP Sites and RMP Locations. Following implementation of the RAP for a RAP site, the City shall submit to DTSC a completion report documenting the implementation of the RAP. Following redevelopment of RMP locations at the Site, the City shall submit to DTSC a completion report for one or a group of RMP locations documenting the implementation of the RMP requirements set forth in the RAP. With respect to

areas of the Site where the remedy includes the implementation of a groundwater pump and treat system, the completion report shall be submitted after the City has demonstrated that the system is operating properly and successfully, and consistent with the RAP. With respect to portions of the Site where the remedy includes recordation of any change to the Covenant, an Implementation Report shall be submitted after DTSC has approved, and the City has caused to be recorded, such an amended Covenant. With respect to any Army-Retained Conditions requiring remedial action, the City shall not be required to prepare a completion report. DTSC shall review all completion reports and issue approval letters when remedial actions are implemented in accordance with the RAP, RMP, and/or RD.

3.11 Certification. After review and approval of completion reports for any portion of the Site, and upon DTSC's determination that no other remedial actions are necessary, DTSC shall consider certification that remedial actions have been implemented and that no further action is required with respect to the area covered by the RAP, subject to any ongoing operation and maintenance obligations in accordance with the RAP. Upon receipt by the Army of DTSC certification of the Site, the Army may grant the CERCLA covenant to the City and terminate the covenant deferral.

3.12 Operation and Maintenance ("O&M"). The City shall comply with all operation and maintenance requirements in accordance with the RAP and approved RD. O&M agreements between the City and DTSC for each relevant portion of the Site, if necessary, must be entered into prior to DTSC's certification.

3.13 Five-Year Review. The City shall review and reevaluate the remedial action after a period of five (5) years from the completion of the construction and startup and every five years thereafter. The review and reevaluation shall be conducted pursuant to section 121(c) of CERCLA, 42 U.S.C. 9601 et seq. Within thirty (30) calendar days before the end of the five-year period, the City shall submit a remedial action review workplan to DTSC for review and approval and shall provide a copy to the Army. Within sixty (60) days of the DTSC's approval of the workplan, the City shall implement the workplan and shall submit a comprehensive report of the results of the remedial action review. The report shall describe the results of all sample analyses, tests and other data generated or received by the City and evaluate the adequacy of the implemented remedy in protection of public health, safety and the environment.

3.14 Remedy Failure. "Remedy Failure" shall occur when DTSC determines, after notice to the City and the Army, and reasonable opportunity to cure, that a City-implemented remedy contained in the RAP fails to protect public health or safety or the environment. Unless otherwise stated by DTSC, within thirty (30) days of receipt of notice from DTSC that additional response activities are necessary due to Remedy Failure, the City shall submit, for approval by DTSC, a work plan for the additional response activities. The plan shall conform to the applicable requirements of Article III, Response Actions Process, of this Agreement. Upon DTSC's approval of the plan pursuant to Section 4.6, the City shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

3.15 Stop Work Order. In the event that DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial

endangerment to the health or safety of people on the Site or in the surrounding area or to the environment or substantially interfere with the remediation or investigation, DTSC may order the City to stop further implementation of this Agreement for the period of time needed to abate the endangerment. In the event DTSC determines that any Site activities (whether or not pursued in compliance with this Agreement) are proceeding without DTSC authorization, DTSC may order the City to stop further implementation of this Agreement or activity for the period of time needed to obtain DTSC authorization, if such authorization is appropriate. Any deadline in this Agreement directly affected by a Stop Work Order under this section, shall be extended for the term of the Stop Work Order. DTSC will provide notification of any stop work orders to the Army.

3.16 Emergency Response Action/Notification. In the event of any action or occurrence (such as a fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Agreement, the City shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the Project Manager as identified by DTSC. The City shall take such action in consultation with the Project Manager and in accordance with all applicable provisions of this Agreement. Within seven (7) days from the occurrence of such an event, the City shall furnish a report to DTSC and Army, signed by the City's Project Coordinator, setting forth the events that occurred and the measures taken in the response thereto. In the event that the City fails to take appropriate response and DTSC takes the action instead, the City shall be liable to DTSC for all costs of the response action. Nothing in this section shall be deemed to limit any other notification requirement to which the City may be subject.

IV. GENERAL PROVISIONS

4.1 Project Coordinator. The Project Coordinator for the City under this Agreement is Aliza Gallo, whose telephone number is 510-238-7405. The responsibilities of the Project Coordinator will be to receive all notices, comments, approvals, and other communications from DTSC. The City shall promptly notify DTSC of any change in the identity of the Project Coordinator.

4.2 Project Engineer/Geologist. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified professional engineer or a registered geologist in the State of California, with expertise in hazardous waste or hazardous substance site cleanup. Within ninety (90) calendar days from the later of (a) the effective date of the Agreement, or (b) the date the Site is transferred by the Army to the City, the City must submit: (a) the name and address of the project engineer or geologist chosen by the City, and (b) in order to demonstrate expertise in hazardous waste or hazardous substance cleanup, the resume of the engineer or geologist, and the statement of qualifications of the consulting firm responsible for the work. The City shall promptly notify DTSC of any change in the identity of the Project Engineer/Geologist.

4.3 Quality Assurance Project Plan (QAPP). All sampling and analysis conducted

by the City under this Agreement shall be performed in accordance with QAPP procedures submitted by the City and approved by DTSC pursuant to this Agreement. The QAPP shall be prepared following the guidance in the “EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5, February 1998.”

4.4 Notice. Whenever any person gives or serves any Notice under this Agreement (the term “Notice”) as used herein includes any demand or other communication with respect to this Agreement), each such Notice 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 (ii) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To the City: Oakland Base Reuse Authority
700 Murmansk Street, Suite 3
Oakland, California 94607-5009
Attention: Aliza Gallo
Executive Director

With a copy to:
City of Oakland
250 Frank Ogawa Plaza
Oakland, California 94612
Attention: John Russo, Esq.
City Attorney

To DTSC: Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3268
Attention: Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

With a copy to:
Department of Toxic Substances Control
Berkeley Regional Office
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721
Attention: Daniel E. Murphy, P.E.
Unit Chief
Office of Military Facilities

Any party may change its address or the individual to whose attention a Notice is to be sent hereunder by giving written notice to the other party in compliance with the provisions of this section.

4.5 Communications. All approvals and decisions of DTSC made regarding

submittals and notifications will be communicated to the City in writing by the Chief, Northern California Operations, Office of Military Facilities, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the City shall be construed to relieve the City of the obligation to obtain such formal approvals as may be required.

4.6 DTSC Review and Approval.

(a) DTSC shall review and provide written comments to the City on draft documents within sixty (60) days of receipt and within thirty (30) days of receipt of draft final documents pursuant to a schedule agreed upon by the City and DTSC. DTSC may extend the review periods for a specified period that shall not exceed thirty (30) days upon written notice to the City prior to the end of the initial sixty (60) day review period, which notice shall contain the reason the extension is necessary. Additional DTSC extensions of review periods as described above may occur for good cause only, as that term is defined in Section 4.15.

(b) If DTSC reasonably determines that any reports, plan, schedule or other document submitted for approval pursuant to this Agreement, fails to comply with this Agreement, or fails to protect public health or safety or the environment, DTSC may return comments to the City with recommended changes and a date by which the City must submit to DTSC a revised document that is responsive to the recommended changes.

(c) Noncompliance with any provision of this Agreement, following the provision to the City and the Army by DTSC of written notice of such noncompliance and a reasonable opportunity (not to exceed thirty (30) days) for the City to cure such noncompliance as specified in the notice, shall be deemed a failure or refusal by the City to comply with this Agreement. In any case in which noncompliance by the City poses an imminent or substantial threat to human health or the environment, said notice may be verbal and the cure period adjusted accordingly.

4.7 Compliance with Applicable Laws. This Agreement shall not relieve the City from complying with all other applicable laws and regulations, including but not limited to compliance with all applicable requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board. The City shall conform all actions required by this Agreement to all applicable federal, state and local laws and regulations.

4.8 Liabilities. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current or future operations of the City. Nothing in this Agreement shall be construed to relieve the Army of any liabilities it may have under CERCLA or any other law for such environmental work. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site. Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law to protect public health or safety or the environment and recovering the cost thereof. Notwithstanding compliance with the terms of this Agreement, the City may be required to take further actions as are

necessary to protect public health and the environment as required by applicable law and regulation. Except as otherwise agreed to between the Army and the City, nothing in this Agreement shall constitute or be construed as a waiver of the City's rights (including any covenant not to sue or release) with respect to any claim, cause of action, or demand in law or equity that the City may have against any "person," as defined in section 101(21) of CERCLA, or Health and Safety Code section 25118.

4.9 Site Access. The City shall provide access to the Site at all reasonable times to DTSC's employees, contractors, and consultants, or other persons performing response actions under DTSC oversight. The City shall ensure that all lease and/or rental agreements include the right to access required by this Agreement. Nothing in this section is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of the City in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by the City. The City shall be provided the opportunity to observe DTSC and its authorized representatives while on the Site and shall be afforded the opportunity to collect split or parallel environmental samples when requested so long as DTSC activities are not materially delayed or disturbed.

In exercising these rights of access, except in the case of imminent endangerment to human health or the environment, DTSC shall make reasonable efforts to minimize interference with the ongoing use of the Site. Furthermore, DTSC and the City agree to cooperate in good faith to minimize any conflict between necessary inspections, environmental investigations and remediation activities and construction activities or operations of the City or its contractors or lessees. Any inspection, investigation, or other response, removal corrective or remedial action undertaken or required by DTSC will, to the maximum extent practicable, be coordinated with representatives designated by the City.

4.10 Sampling, Data and Document Availability. The City shall use State of California certified laboratories for analysis of samples taken under the auspices of this Agreement, unless uncertified specialized analytical methods are required with the approval of DTSC. The City shall permit DTSC and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by the City or on the City's behalf in any way pertaining to work undertaken pursuant to this Agreement. The City shall submit all such data upon the request of DTSC. Copies shall be provided within seven (7) days of receipt of DTSC's written request, except where reporting obligations of the City are subject to other delivery schedules specified in the RMP. The City shall inform DTSC at least seven (7) days in advance of all field sampling under this section, and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by the City pursuant to this Agreement. The City shall ensure that the data, reports, and other documents prepared pursuant to this Agreement are placed in a central, public repository and shall assist DTSC in maintaining the Administrative Record.

4.11 Record Retention. All such data, reports and other documents shall be preserved by the City for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, the City shall either comply with that request or deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. The City shall give DTSC six months notice prior to destroying any documents covered by this Agreement.

4.12 Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the City in carrying out activities pursuant to this Agreement, nor shall the State of California be held as party to any contract entered into by the City or its agents in carrying out activities pursuant to this Agreement.

4.13 Additional Actions. By entering into this Agreement, DTSC does not waive the right to take any further actions authorized by law.

4.14 Extension Requests. If the City is unable to perform any activity or submit any document within the time required under the Schedule, the City may, prior to expiration of the time, request an extension of the time in writing, which shall include new proposed deadlines. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

4.15 Extension Approvals. If DTSC determines that “good cause” exists for an extension, it will grant the request and specify a new schedule in writing. For the purposes of this Section 4.15, “good cause” shall include, but not be limited to, causes which could not have been reasonably foreseen or prevented, such as, by way of example, war, acts of God, action or inaction of Congress, civil commotion, labor disputes, damage due to fire or other casualty, or other causes beyond the City’s reasonable control. The City shall comply with the new schedule incorporated in this Agreement.

4.16 Cost Recovery. This Agreement does not affect the rights of DTSC and the City to recover response costs under CERCLA, Health and Safety Code sections 25187.2 and 25360, or any other applicable state or federal law.

4.17 Payment of Costs. The Army and the City are both responsible for DTSC’s costs incurred for the Site. The Army and the City have agreed that DTSC’s costs incurred in the implementation of this Agreement shall be paid by the Army in accordance with the Defense State Memorandum of Agreement (“DSMOA”) and the Defense Environmental Restoration Program, 10 U.S.C. section 2701(d)(1). If the DSMOA funds become unavailable, the Army and the City will provide an alternate mechanism for payment of DTSC’s costs.

4.18 Financial Assurance. The City shall secure a surety bond or some other financial instrument or mechanism that offers assurances in an amount that DTSC determines will ensure the completion of all response actions that are necessary under this Agreement. This amount shall be in addition to the cost of acquiring any such bond, financial instrument, or mechanism and any associated legal fees. The assurances should be in an amount that

adequately covers the difference between the insurance attachment point and the amount the Army agrees to pay the City (minus the cost of insurance) as specified in the ESCA. All such assurances required under this section are subject to the approval of DTSC and shall be in effect prior to conveyance of the Site to the City.

4.19 Severability. The requirements of this Agreement are severable, and the City shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

4.20 Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by the City pursuant to this Agreement and approved by DTSC shall be implemented by the City as may be required. Any noncompliance with an approved document, following the provision to the City by DTSC of written notice of such noncompliance and a reasonable opportunity (not to exceed thirty (30) days) for the City to cure such noncompliance, as specified in the notice, shall be deemed a failure or refusal by the City to comply with this Agreement. In any case in which noncompliance by the City poses an imminent or substantial threat to human health or the environment, said notice may be verbal and the cure period adjusted accordingly.

4.21 Modifications. DTSC and the City may modify this Agreement by written amendment executed by both parties. Any modification to this Agreement shall be effective on the date stated in the modification and shall be deemed incorporated in this Agreement.

4.22 Time Periods. Unless otherwise specified, time periods begin from the effective date of this Agreement and “days” means calendar days.

4.23 Limits to Liability. It is the intent of the Parties to this Agreement that the City will not be obligated pursuant to this Agreement to perform environmental services with respect to Army-Retained Conditions, as defined in Section 2.3.

4.24 Termination and Satisfaction. The obligations of the City under this Agreement shall terminate and be deemed satisfied upon the City’s receipt of written notice from DTSC that the City has complied with all the terms of this Agreement.

4.25 Change in Ownership.

(a) Generally. The City shall notify DTSC and the Army of any proposed change in ownership of all or any portion of the Site at least ninety (90) days in advance of such change. No change in ownership status relating to the Site shall in any way alter the City’s responsibility under this Agreement. No conveyance of title, easement, or other interest in the Site, or a portion of the Site, shall affect the City’s obligations under this Agreement. Unless DTSC agrees, in consultation with the Army, that such obligations, in whole or in part, may be transferred to a third party, the City shall be responsible for and liable for any failure to carry out all activities required of the City by the terms and conditions of this Agreement, regardless of the City’s use of employees, agents, contractors, or consultants to perform any such tasks. DTSC may at its option require either a revision to this Agreement that specifies the change in ownership and cleanup roles and responsibilities, or require an additional consent agreement

with the new party. The City shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred.

(b) Port of Oakland. To the extent some or all of the Site is transferred by the City to the Port of Oakland (“Port”), and the City and Port jointly request in writing that DTSC approve assignment of the City’s rights and obligations under this Agreement to the Port with respect to the transferred portions of the Site, DTSC agrees to consider, in consultation with the Army, approval of such assignment.

(c) Pre-Transfer Notice. The City has indicated its intention to transfer certain portions of the Site to the Port of Oakland. Those certain portions of the Site to be transferred to the Port of Oakland immediately upon conveyance of the Site from the Army to the City include the 49.9-acre submerged land area and approximately 20-acre upland area associated with the Port of Oakland’s prospective New Berth 21 project. The parties agree that this satisfies the 90-day notice requirement; however, until an assignment occurs pursuant to Section 4.25(b), above, the City remains solely responsible for compliance with this Agreement.

(d) Master Developer. To the extent that a substantial portion of the Site that is not transferred to the Port is transferred by the City to a Master Developer, and the City and Master Developer jointly request in writing that DTSC approve assignment of the City’s rights and obligations under this Agreement to the Master Developer, DTSC agrees to review and consider, in consultation with the Army, approval of such assignment.

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

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

4.28 Effective Date. This Agreement shall be effective when all of the conditions set forth in this section have been met. The effective date shall be the date upon which DTSC sends written notification to the City that all the conditions have been satisfied. The conditions are:

(a) DTSC executes, reviews, and/or concurs with, as applicable, all final documents associated with the conveyance of the Site to the City. The documents with all attachments, exhibits, and appendices shall include, but not be limited to: 1) the agreement between DTSC and the Army, 2) the ESCA, 3) the conveyance deed, 4) any environmental covenants, conditions, and restrictions, 5) the Economic Development Conveyance Memorandum of Agreement, and 6) the RAP and RMP.

(b) the Governor has approved the “early transfer” of the Site to the City and has approved the deferral of the CERCLA section 120(h)(3)(A)(ii)(I) covenant from the Army to the City;

(c) the City is the owner of the Site as demonstrated in the deed from the United States;
and

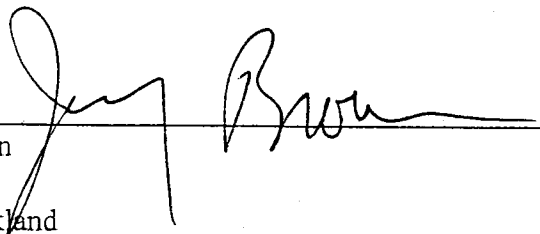
(d) this Agreement has been fully executed, by the City of Oakland's representative, Oakland's City Attorney and DTSC's representative. DTSC's representative shall be the final signatory to this Agreement.

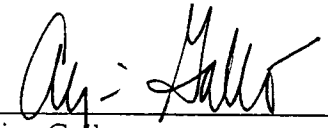
4.29 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

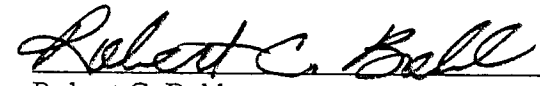
V. PENALTIES FOR NONCOMPLIANCE

Failure to comply with the terms of this Agreement following applicable notice and cure periods as set forth herein may subject the City to liability for penalties of up to \$25,000 for each day of noncompliance, and other consequences pursuant to chapters 6.5 and 6.8 of division 20 of the Health and Safety Code, and other applicable provisions of law.

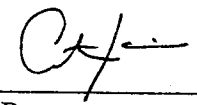
City of Oakland:

By:  Date: 5-16-2003
Jerry Brown
Mayor
City of Oakland

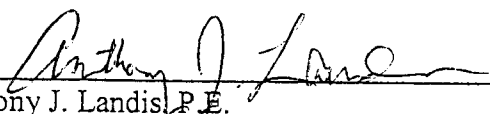
By:  Date: 5/16/2003
Aliza Gallo
Executive Director
Oakland Base Reuse Authority

By:  Date: 5/15/03
Robert C. Bobb
City Manager/Agency Administrator
City of Oakland/Oakland Redevelopment Agency

Approved as to form and legality on _____

By:  Date: 5-16-03
John Russo
City Attorney/Agency Council
City of Oakland/Oakland Redevelopment Agency

Department of Toxic Substances Control:

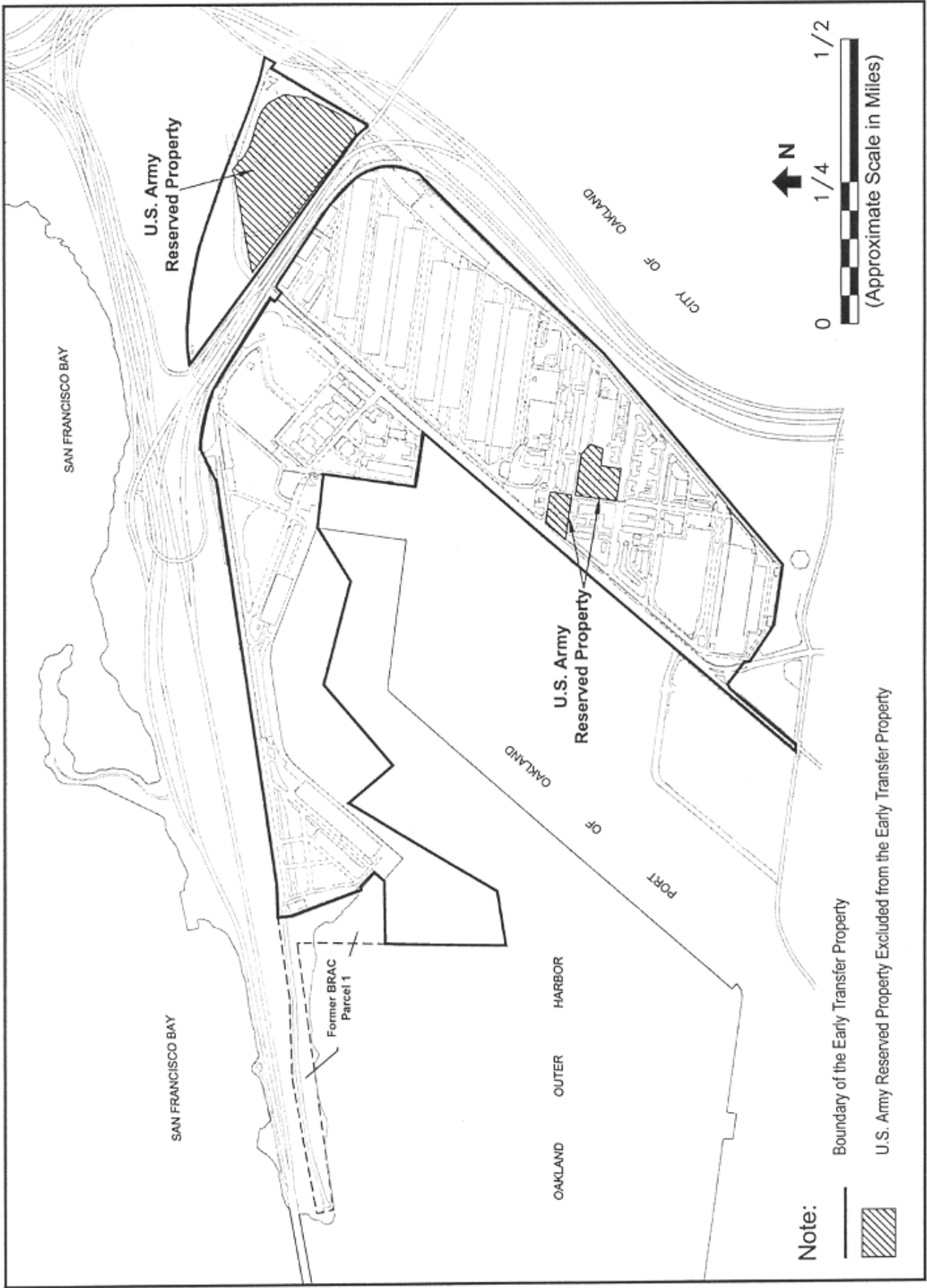
By:  Date: 5-19-03
Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

LIST OF EXHIBITS

- | | |
|-----------|----------------------------------------------------|
| Exhibit A | Map of Site |
| Exhibit B | Environmental Services Cooperative Agreement |
| Exhibit C | Remedial Action Plan |
| Exhibit D | Covenant to Restrict Use of Property |
| Exhibit E | Summary Description of RAP Sites and RMP Locations |
| Exhibit F | Interim Use Buildings/Areas |

EXHIBIT A

MAP OF SITE



Note:
 — Boundary of the Early Transfer Property
 ▨ U.S. Army Reserved Property Excluded from the Early Transfer Property

0 1/4 1/2
 (Approximate Scale in Miles)

Early Transfer Property at the Former Oakland Army Base

EXHIBIT B

ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT

(Under Separate Cover)

EXHIBIT C

REMEDIAL ACTION PLAN

(Under Separate Cover)

EXHIBIT D

COVENANT TO RESTRICT USE OF PROPERTY

RECORDING REQUESTED BY
FIRST AMERICAN TITLE

RECORDING REQUESTED BY
FIRST AMERICAN TITLE
RECORDING REQUESTED BY:
City of Oakland



2003466371

08/08/2003 11:56 AM

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

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3268
Attn: Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities



46 PGS

H/b
PAJ

159883

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

**Former Oakland Army Base
Oakland, California**

This Covenant to Restrict Use of Property ("Covenant") is made by and between the Oakland Base Reuse Authority and the City of Oakland by and through the Oakland Redevelopment Agency, collectively herein referred to as the "City or Covenantor," the current owner of property situated in Oakland, 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, Department of Toxic Substances Control ("DTSC"). Pursuant to California Civil Code ("Civil Code") section 1471(a)(3), DTSC 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 and Safety Code ("Health and Safety Code") section 25260. The Covenantor and DTSC, collectively referred to as the "Parties," hereby agree that in accordance with Civil Code section 1471 and Health and Safety Code sections 25222.1 and 25355.5 that the use of the Property be restricted as set forth in this Covenant to protect human health, safety, and the environment and that this Covenant shall run with the land.

**ARTICLE I
STATEMENT OF FACTS**

1.01 The Property, totaling 363.5 acres, is more particularly described and depicted in Exhibit A. Exhibit A contains the Property map in seven sheets showing the Property boundary and the legal description in seventeen pages. The Property is located in a developed area of the former Oakland Army Base, in the City of Oakland, County of Alameda, State of California.

1.02 The Covenantor and DTSC entered into a Consent Agreement on September 27, 2002, and subsequently by agreement modified the Consent Agreement to include new signatories and other modifications. The Consent Agreement was resigned by all signatories on May 16, 2003. The Consent Agreement establishes the process and timetable for the completion of the response and corrective actions at specified portions of the Property. The Consent Agreement is on file with DTSC and the Covenantor.

1.03 As described in the Consent Agreement, the soil and groundwater at the Property are known to be contaminated with hazardous substances, as defined in Health and Safety Code section 25316, which include, but are not limited to, the following general contaminants of concern: metals, volatile organic compound, semi-volatile organic compounds, polynuclear aromatic hydrocarbons, polychlorinated biphenyls, and petroleum hydrocarbons. Several of these hazardous substances are carcinogens. The Property has not been fully characterized with respect to nature and extent, and risk resulting from the presence of these contaminants.

Based on preliminary analyses, DTSC has concluded that use of the Property in a manner inconsistent with the restrictions set forth in Article IV of this Covenant may entail an unacceptable health risk to the users or occupants of such property operated or occupied. DTSC has further concluded that the Property operated or occupied subject to the restrictions of this Covenant and subject to the restrictions and requirements set forth in the final Remedial Action Plan (RAP) dated September 27, 2002 and accompanying Risk Management Plan (RMP) dated September 27, 2002 which the Covenantor must implement pursuant to the Consent Agreement, does not present an unacceptable threat to human safety or the environment.

The RAP describes contamination in various locations throughout the base that is known to be significant, and describes means by which such contamination will be remediated. The RMP, which covers the entire Property, is a component of the remedies selected in the RAP. The RMP serves two purposes. The first is to determine and implement presumptive style remedies for locations with standard contaminant profiles and site conditions. These remedies apply to both known and as yet unidentified contaminated locations (RMP locations). It also contains a mechanism to elevate RMP locations to RAP sites if warranted. The second purpose of the RMP is to serve as an institutional control that establishes site identification and risk management protocols.

**ARTICLE II
DEFINITIONS**

2.01 Covenantor. “Covenantor” shall mean the Oakland Base Reuse Authority and the City of Oakland by and through the Oakland Redevelopment Agency.

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

2.03 Occupant. “Occupant” shall mean any person or entity entitled by leasehold or other legal relationship to the right to occupy any portion of the Property.

2.04 Owner. “Owner” means the Covenantor and shall include 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.

**ARTICLE III
GENERAL PROVISIONS**

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, “Environmental 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 Environmental Restriction: (a) runs with the land pursuant to Health and Safety Code sections 25222.1 and/or 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 DTSC; and (d) is imposed upon the entire Property unless expressly stated in a document or an attachment that a specific portion or area is the subject of a DTSC approved waiver to allow a restricted use. Exhibit B contains a DTSC approved interim land use waiver.

3.02 Binding upon Owner and Lessees/Occupants. Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owner and Occupants 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(b), all successive owners of the Property are expressly bound hereby for the benefit of DTSC.

3.03 Written Notification of Hazardous Substance Release. The Owner and/or Occupant shall, at least thirty (30) days prior to the sale, lease, or rental of the Property, give written notice to the subsequent transferee that a release of hazardous substances has come to be located on or beneath the Property, pursuant to Health and Safety Code section 25359.7. Such written notice shall include a copy of this Covenant, and a notification of the restrictions on use of the property contained herein.

3.04 Incorporation into Deeds, Leases, or Rental Agreements. The Environmental Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, or rental agreements entered into for any portion of the Property to which they are in effect and applicable. Within ten (10) days of the effective date of this Covenant, the Covenantor shall provide a copy of this Covenant to all existing occupants on the Property.

3.05 Conveyance of Property. Until the Property has been certified as being free of known or suspected hazardous substance releases by DTSC per chapter 6.8 of the Health and Safety Code, the Owner shall provide to DTSC not less than ninety (90) days prior to any proposed conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances) notice of such proposed conveyance. The Owner shall provide notice to DTSC not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances).

3.06 Access for DTSC. DTSC 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 DTSC to protect the public health or safety or the environment.

ARTICLE IV ENVIRONMENTAL RESTRICTIONS

4.01 Environmental Restrictions.

(a) Sensitive land uses, including, but not limited to, residential housing, schools, day-care facilities, hospitals, and hospices are prohibited.

(b) The construction of groundwater wells and extraction of groundwater from new and existing wells for all purposes are prohibited unless specifically approved by DTSC.

(c) Activities that disturb surface or subsurface soil, disturb existing soil covers, disturb or restrict access to groundwater monitoring wells, generate water in excavations, extract groundwater from excavations, or alter groundwater conditions are prohibited except as conducted pursuant to the RAP and RMP.

(d) The Owner and Occupants are required to comply with the RAP and RMP, including the provisions for soil and groundwater management, maintenance of existing cover or construction of new cover, mitigation measures during earthwork, management of below grade structures, and construction dewatering.

(e) The Owner is required to submit annual certification to DTSC attesting to compliance with Section 4.01 of this Covenant.

4.02 Procedures for Obtaining Waivers from DTSC.

(a) At any time before or after the effective date of this Covenant, the Owner, or with the Owner's consent, an Occupant, may request DTSC's approval of a waiver for a portion of the Property to be used in a manner inconsistent with the restrictions set forth in Section 4.01 of this Covenant or to engage in an activity prohibited by Section 4.01 of this Covenant. Such requests shall provide sufficient information to enable DTSC to evaluate the appropriateness of the request. DTSC shall act upon such requests as expeditiously as feasible, but in no event later than thirty (30) days after DTSC receives the request unless DTSC extends this period for no more than thirty (30) days upon written notice to the requesting party of the reason therefore. DTSC's extension as described above may occur more than once. DTSC shall base its decision on protection of public health and the environment.

(b) DTSC will consider any submittal of a remedial investigation workplan or remedial action decision document consistent with the RAP or RMP to be a waiver request for any included actions that are inconsistent with the restrictions set forth in Section 4.01 of this Covenant.

(c) Nothing in this Covenant shall be construed to require an Owner to apply for, or DTSC to issue, a variance, termination or release pursuant to Article VI of this Covenant, in order to obtain DTSC's approval of a request that a portion of the Property be used in a manner inconsistent with the restrictions set forth in Section 4.01 of this Covenant or to obtain DTSC's approval to engage in an activity prohibited by Section 4.01 of this Covenant.

(d) An Owner or Occupant may perform, or cause to be performed, any interior or exterior renovation, rehabilitation, or demolition without DTSC approval, as long as such activities are consistent with, and do not violate the terms of, this Covenant.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Owner to comply with any of the Environmental Restrictions specifically applicable to it shall be grounds for DTSC to obtain injunctive relief prohibiting commencement or continuation of any activities restricted by this Covenant. Actual or threatened violation of this Covenant, including but not limited to commencement or completion of any 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.

**ARTICLE VI
VARIANCE, TERMINATION AND RELEASE**

6.01 Variance. In addition to the procedures set forth in Section 4.02 of this Covenant, the Owner, or with the Owner's consent, any Occupant may apply to DTSC for a written variance from the provisions of this Covenant. DTSC 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 Health and Safety Code section 25233. DTSC will grant the variance only after finding that such a variance would be protective of human health, safety and the environment.

6.02 Application for Termination. In addition to the procedures set forth in Section 4.02 of this Covenant, the Owner, or with the Owner's consent, any Occupant, may apply to DTSC for a termination of the Environmental 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.

6.03 Release. This Covenant shall continue in effect in perpetuity unless ended by law or by DTSC under this paragraph 6.03. DTSC shall provide a release, suitable for recording, of the Environmental Restrictions in this Covenant with respect to a particular portion of the Property promptly after any of the following occur:

(a) DTSC approves an application for termination of the Covenant with respect to a portion or all of the Property pursuant to Section 6.02.

(b) DTSC makes a determination pursuant to this Section 6.03(b) without receiving an application, that any or all of the Environmental Restrictions on the use of any or all parts of the Property are no longer necessary to protect present or future human health, safety, or the environment. In making a determination pursuant to this Section 6.03(b) that any or all of the Environmental Restrictions on the use of any or all parts of the Property are no longer necessary to protect present or future human health or safety or the environment, DTSC 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 DTSC 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 Exhibits A and B, 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 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 (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Oakland Base Reuse Authority
 700 Murmansk Street, Suite 3
 Oakland, California 94607-5009
 Attention: Aliza Gallo
 Executive Director

To DTSC: Department of Toxic Substances Control
 Sacramento Regional Office
 8800 Cal Center Drive
 Sacramento, California 95826-3268
 Attention: Anthony J. Landis, P.E.
 Chief, Northern California Operations
 Office of Military Facilities

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 this Environmental Restriction or other terms set forth herein 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.

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

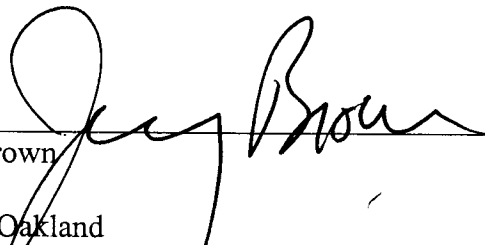
7.06 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

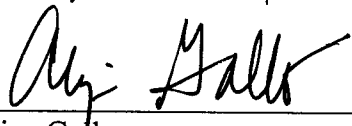
7.07 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

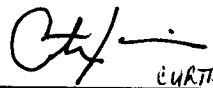
Covenantor:

By:  Date: 5-16-2003
Jerry Brown
Mayor
City of Oakland

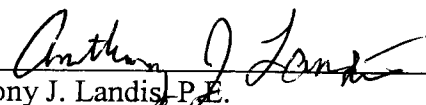
By:  Date: 5-15-2003
Aliza Gallo ALIZA GALLO
Executive Director
Oakland Base Reuse Authority

By:  Date: 5/15/03
Robert C. Bobb
City Manager/Agency Administrator
City of Oakland/Oakland Redevelopment Agency

Approved as to form and legality on _____.

By:  Date: 5-16-03
for John Russo CURTIS S. KIDDER
City Attorney/Agency Council
City of Oakland/Oakland Redevelopment Agency

Department of Toxic Substances Control:

By:  Date: 6-7-03
Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

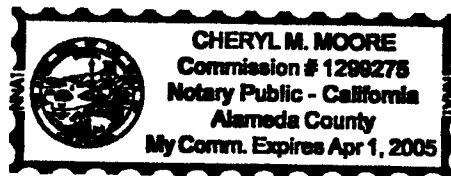
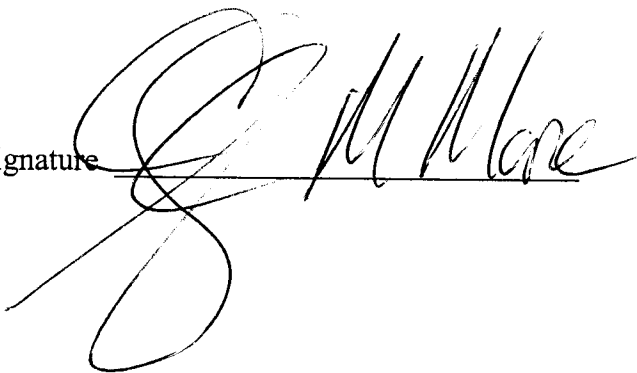
STATE OF CALIFORNIA)

COUNTY OF Alameda)

On this 15th day of May, in the year 2003, before me
Cheryl M. Moore, a Notary Public in and for said State,
personally appeared Aliza Gallo,
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




STATE OF CALIFORNIA)

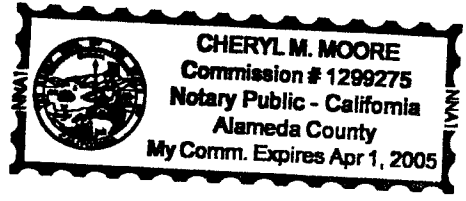
)

COUNTY OF Alameda)

On this 15th day of May, in the year 2003, before me
Robert C. Bobb, a ~~Notary Public in and for said State,~~
personally appeared Cheryl M. Moore, Notary in State
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 



STATE OF CALIFORNIA)

)

COUNTY OF ALAMEDA)

On this 16TH day of MAY, in the year 2003, before me

JAMIE R. SMITH, a Notary Public in and for said State,

personally appeared JERRY BROWN,

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the

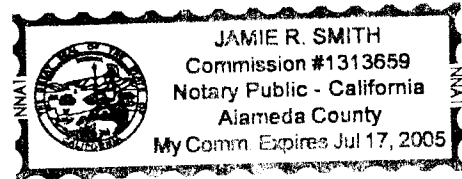
person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that

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 Jamie R. Smith

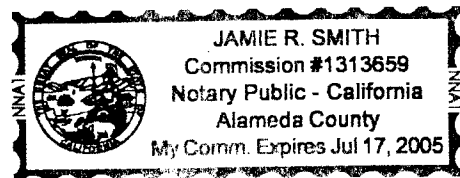
STATE OF CALIFORNIA)

)

COUNTY OF ALAMEDA)

On this 16TH day of MAY, in the year 2003, before me
JAMIE R. SMITH, a Notary Public in and for said State,
personally appeared CURTIS S. KIDDER,
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 Jamie R. Smith

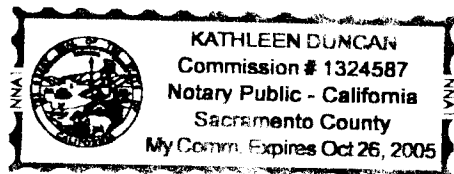
STATE OF CALIFORNIA)

)

COUNTY OF Sacramento)

On this 7th day of August, in the year 2003, before me
Kathleen Duncan, a Notary Public in and for said State,
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 Kathleen Duncan

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: *CHERYL M. MOORE*
COMMISSION NUMBER: *1299275*
NOTARY PUBLIC STATE: *CALIFORNIA*
COUNTY: *ALAMEDA*
MY COMMISSION EXPIRES: *APRIL 1, 2005*
SIGNATURE OF DECLARANT: *Paul C Donahue*
PRINT NAME OF DECLARANT: **PAUL C. DONAHUE AGENT FOR FIRST AMERICAN TITLE GUARANTY COMPANY**
CITY AND STATE OF EXECUTION: **CITY OF OAKLAND, STATE OF CALIFORNIA**
DATE SIGNED: *AUGUST 8, 2003*

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: JAMIE R. SMITH
COMMISSION NUMBER: 1313659
NOTARY PUBLIC STATE: CALIFORNIA
COUNTY: ALAMEDA
MY COMMISSION EXPIRES: JULY 17, 2005
SIGNATURE OF DECLARANT: Paul C Donahue
PRINT NAME OF DECLARANT: **PAUL C. DONAHUE AGENT FOR FIRST AMERICAN TITLE GUARANTY COMPANY**
CITY AND STATE OF EXECUTION: **CITY OF OAKLAND, STATE OF CALIFORNIA**
DATE SIGNED: AUGUST 8, 2003

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: *KATHLEEN DUNCAN*

COMMISSION NUMBER: *1324587*

NOTARY PUBLIC STATE: *CALIFORNIA*

COUNTY: *SACRAMENTO*

MY COMMISSION EXPIRES: *OCTOBER 26, 2005*

SIGNATURE OF DECLARANT: *Paul C Donahue*

PRINT NAME OF DECLARANT: **PAUL C. DONAHUE AGENT FOR FIRST AMERICAN TITLE GUARANTY COMPANY**

CITY AND STATE OF EXECUTION: **CITY OF OAKLAND, STATE OF CALIFORNIA**

DATE SIGNED: *AUGUST 8, 2003*

EXHIBIT A
MAP OF PROPERTY
AND
LEGAL DESCRIPTION

(The legal description has seventeen pages and the Property map includes seven sheets.)

Exhibit "A"
Legal Description
Economic Development Conveyance Property
Oakland Army Base

All that certain real property, in the City of Oakland, County of Alameda, State of California, described as follows:

Parcel 1

A portion of the lands described in that certain Final Judgment, United States of America vs. Southern Pacific Railroad Company, et al., Case No. 22212-R, District Court of the United States in and for the Northern District of California, Southern Division, recorded October 23, 1943, in Book 4453 of Official Records, Page 70 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4453 O.R. 70) being that portion of said lands described as "Parcel 3" in an unrecorded "Transfer and Acceptance of Military Real Property", from the Naval Facilities Engineering Command to the Department of the Army, Sacramento District Engineers, Dated October 22, 1970; A portion of the Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197); A portion of that parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded February 15, 1979 as Document 79-030025, in the Office of the Recorder of said Alameda County (hereinafter referred to as Doc. 79-030025); A portion of those Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485); A portion of those Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded October 6, 1941, in Book 4121 of Official Records, Page 191 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4121 O.R. 191); A portion of the lands described in that certain Final Judgment as to Tract 5, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 16, 1951 in Book 6361 of Official Records, Page 334 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6361 O.R. 334); A portion of the lands described in that certain Final Judgment as to Tract 23, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded January 11, 1950 in Book 5987 of Official Records, Page 319 in the Office of the Recorder of said Alameda County (hereinafter referred to as 5987 O.R. 319); And a portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel: 32, Image:660) all of which are more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence South 38°00'05" West, 989.35 feet to the eastern most corner of Parcel Seven as described in that certain Quitclaim Deed, recorded on June 15, 1999 as Doc. No. 99-222447 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 99-222447), being a point on the agreed upon location of the "Low Tide Line of 1852" as described in City of Oakland Ordinance No. 3099 a certified copy of which was recorded on October 10, 1910 in Book 1837 of Deeds, Page 84, in the Office of the Recorder of Alameda County (hereinafter referred to as 1837 Deeds 84), said point being marked by a pin set in concrete in a monument well, as shown on said Army Map and being the **POINT OF BEGINNING** of Parcel 1 as herein described;

Thence departing from said agreed upon location of the "Low Tide Line of 1852", along the northeastern, northern and northwestern lines of said Parcel Seven (Doc. 99-222447), the following eight courses:

- 1) North 51°26'28" West 40.85 feet to the beginning of a non-tangent curve concave southeasterly, having a radius of 137.91 feet and a central angle of 36°35'48", from which beginning the radius point bears South 12°23'22" East;
- 2) along said curve to the left, an arc distance of 88.09 feet;
- 3) South 41°00'50" West, 320.04 feet;
- 4) South 48°54'49" East, 5.00 feet;
- 5) South 41°00'50" West, 423.59 feet;
- 6) North 81°57'10" West, 8.34 feet;
- 7) South 41°00'50" West, 10.00 feet;
- 8) South 48°59'10" East, 12.14 feet to a point on the northern line of Seventh Street as described by City of Oakland in Ordinance No. 481 N.S. finally passed by the Council of the City of Oakland on June 17, 1913;

Thence westerly along said northern line of Seventh Street, North 81°57'10" West 54.98 feet to the southwest corner of Parcel No. 2, Tract 14 as described in said Final Judgment as to Interests

of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L (Reel: 32, Image:660);

Thence departing from the said northern line of Seventh Street, along the northwestern line of said Parcel 2, Tract 14 (Reel: 32, Image:660) also being the northwestern line of Maritime Street, North 41°00'50" East, 4524.40 feet to the southeasterly corner of Parcel 1, Tract 14 (Reel: 32, Image:660);

Thence departing from the said northwestern line of said Parcel 2, Tract 14 (Reel: 32, Image:660) also being the northwestern line of Maritime Street, along the generally southern lines of said Parcel 1, Tract 14 the following nine courses:

- 1) North 81°56'51" West, 519.29 feet;
- 2) North 08°03'07" East, 936.41 feet;
- 3) South 86°48'30" West, 500.27 feet;
- 4) South 59°33'40" West, 589.58 feet;
- 5) North 75°26'49" West, 983.14 feet;
- 6) South 49°35'36" West, 978.73 feet;
- 7) North 40°23'33" West, 539.98 feet;
- 8) South 31°07'59" West, 1610.00 feet;
- 9) South 82°10'52" West, 510.13 feet to a point on said southern line, from which the southwest corner of said Parcel 1, Tract 14 bears South 82°10'52" West 3279.06 feet, said point being the southeast corner of that portion of Parcel 1 of Tract 14 that is alleged to have been transferred to the General Services Agency by the Army in an unrecorded form entitled "Real Property Acquisition Advice" dated March 28, 1983 and which alleges to describe the "underwater portion of Tract A-114 comprising the westward 138 acres+/-" (hereinafter referred to as the GSA Parcel);

Thence departing from the said generally southern line of said Parcel 1, Tract 14, along a line that is parallel with the western line of said Parcel 1, Tract 14, being the eastern line of the GSA Parcel, North 01°07'59" East 1113.29 feet;

Thence departing from said parallel line at right angles, South 88°52'01" East 611.72 feet to an angle point on the existing face of wharf located at the portion of the Oakland Army Base formerly known as Pier 7;

Thence northerly and westerly along said face of wharf, the following two courses:

1) North 41°16'18" East, 124.89 feet;

2) North 48°38'16" West, 249.42 feet to a point in the existing western perimeter fence line of said Pier 7;

Thence northerly along the said western perimeter fence line of Pier 7, the following two courses:

1) North 20°41'10" West, 640.82 feet;

2) North 1°48'40" West, 114.71 feet to a point on the southern line of Parcel "S" as described in that certain Indenture and Conveyance by and between the State of California acting by and through it's Department of Public Works and the California Toll Bridge Authority, and City of Oakland, acting by and through it's Board of Port Commissioners and recorded on February 17, 1942 in Book 4186 of Official Records, at Page 156 in the Office of the Recorder of Alameda County (hereinafter referred to as 4186 O.R. 156);

Thence along the southern line of said Parcel "S" (4186 O.R. 156), the following two courses:

1) North 88°08'30" East, 291.86 feet;

2) North 81°36'26" East, 3747.00 feet to the western most corner of said lands described in Final Judgment as to Tract 5, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, (6361 O.R. 334);

Thence along the northern line of said Tract 5, North 64°17'11" East 397.63 feet to the western most corner of said lands described in Final Judgment as to Tract 23, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L (5987 O.R. 319) said angle point being marked by a 1 ½" brass disc with punch in the top of a concrete culvert as shown on said Army Map;

Thence along the northern line of said Tract 23, North 71°46'34" East 111.41 feet to the western most corner of Parcel 56444 as described in that certain Quitclaim Deed (I-880 Connector Corridor) recorded on February 13, 2002 as Document No. 2002072863 of Official Records in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002072863) said western corner being marked by a 1" iron pipe and CalTrans cap as shown on Record of Survey No. 1687, filed in Book 25 of Surveys, Pages 58-69, Alameda County Official Records, said western most corner of Parcel 56444 is further described as being the beginning of a non-tangent curve in the southwesterly line of said Parcel 56444, whose radius point bears South 8°37'39" West from said western most corner of Parcel 56444, said non-tangent curve being concave southwesterly, having a radius of 1457.00 feet, a central angle of 9°28'45";

Thence, along the generally southwestern line of said Parcel 56444, the following fifteen courses:

1) along said curve to the right, an arc distance of 241.05 feet;

- 2) South $63^{\circ}07'59''$ East, 314.87 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 3) South $59^{\circ}26'20''$ East, 388.09 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 4) South $54^{\circ}38'31''$ East, 108.88 feet;
- 5) South $71^{\circ}14'04''$ East, 214.96 feet;
- 6) South $68^{\circ}12'53''$ East, 121.49 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 7) South $52^{\circ}34'03''$ East, 57.26 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 8) South $26^{\circ}23'46''$ West, 50.81 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 9) South $67^{\circ}50'56''$ East, 108.73 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 10) North $40^{\circ}50'20''$ East, 50.00 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 11) South $59^{\circ}26'20''$ East, 469.79 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 12) South $64^{\circ}31'30''$ East, 100.40 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;
- 13) South $59^{\circ}20'55''$ East, 161.93 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687 marking the beginning of a non-tangent curve concave southwesterly, having a radius of 926.00 feet and a central angle of $13^{\circ}07'36''$, from which the radius point bears South $31^{\circ}52'38''$ West;
- 14) along said curve to the right, an arc distance of 212.15 feet to a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687 marking the beginning of a non-tangent curve concave westerly, having a radius of 926.00 feet and a central angle of $57^{\circ}35'58''$, from which the radius point bears South $47^{\circ}51'29''$ West;
- 15) along said curve to the right an arc distance of 930.91 feet to the intersection of said curve with the southeastern line of Parcel No. 1 as described in said Indenture between the Southern Pacific Company and the United States of America (4121, Page 191);

Thence along the southeastern line of said lands of said Parcel 1 (4121 O.R. 191), the southeastern line of the said parcel of land described in the Indenture between the Southern Pacific Company and the United States of America (Doc. 79-030025) and the southeastern line of said parcel of land described in the Indenture between the Southern Pacific Company and the United States of America (4189 O.R. 197), South 44°38'39" West, 2418.42 feet to an angle point in the southeastern line of said parcel;

Thence continuing along said southeastern line (4189 O.R. 197), South 50°22'32" West, 2558.74 feet to the eastern most corner of Parcel Six of said Quitclaim Deed (Doc. 99222447);

Thence along the northern line of said Parcel Six, the following six courses:

- 1) North 81°56'42" West, 579.78 feet;
- 2) North 56°26'26" West, 360.91 feet;
- 3) North 20°08'21" West, 15.45 feet;
- 4) North 14°24'00" West, 25.00 feet;
- 5) North 00°04'48" East, 10.68 feet;
- 6) North 51°26'30" West, 210.65 feet to the **POINT OF BEGINNING**, containing 15,425,853 square feet (354.129 acres), more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this legal description.

EXCEPTING THEREFROM, that portion of Parcel 1, as hereinabove described, commonly referred to as the "**Building 780 Parcel**" being more particularly described as follows:

Parcel 1A

A portion of that certain Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197), being Parcel B as described in that unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated December 17, 1998 (hereinafter referred to as the Building 780 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990,

filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 77°06'11" East 1106.11 feet to the western most corner of said Building 780 Parcel, said corner being marked by a bolt and washer stamped "LS 6379", being the **POINT OF BEGINNING** of Parcel 1A as herein described;

Thence along the northwest, northeast, southeast and generally southwestern lines of said Building 780 Parcel, the following eight courses:

- 1) North 08°06'06" East, 425.20 feet to the northern most corner of said parcel, said corner being marked by a concrete nail and shiner stamped "LS 6379";
- 2) South 81°58'14" East, 655.73 feet to the eastern most corner of said parcel;
- 3) South 08°01'46" West, 294.89 feet to the southeast corner of said parcel, said corner being marked by a pipe and plug stamped "LS 6379";
- 4) North 82°02'59" West, 117.67 feet to an angle point in said generally southwestern line, said angle point being marked by a pipe and plug stamped "LS 6379";
- 5) North 07°49'06" East, 31.76 feet to an angle point in said generally southwestern line, said angle point being marked by a pipe and plug stamped "LS 6379";
- 6) North 82°00'47" West, 261.81 feet to an angle point in said generally southwestern line;
- 7) South 07°59'16" West, 161.25 feet to an angle point in said southwesterly line, said angle point being marked by a 2.5" brass disk and bolt stamped "LS 6379";
- 8) North 82°03'57" West, 276.78 feet to the **POINT OF BEGINNING**, containing 221,199 square feet (5.078 acres) more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this legal description.

AND ALSO EXCEPTING THEREFROM, that portion of Parcel 1 as hereinabove described, commonly referred to as the "**Building 762 Parcel**" being more particularly described as follows:

Parcel 1B

A portion of that Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded February 15, 1979 as Document 79-030025, in the Office of the Recorder of said Alameda County (hereinafter referred to as Doc. 79-030025); A portion of the Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197); A portion of the lands described in that certain Final

Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County (herein after referred to as Reel:032, Image 660), being the "Parcel Encompassing Building 762" as described in that certain unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated September 3, 1997 (herein after referred to as the Building 762 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence, North 43°48'16" East 958.07 feet to the western most corner of said Building 762 Parcel, said corner being marked by a 5/8" rebar with plastic cap stamped "LS 5671" being the **POINT OF BEGINNING** of Parcel 1B as herein described;

Thence, along the northwest, northeast, southeast and southwest lines of said parcel the following four courses:

- 1) North 41°02'39" East, 238.78 feet to the northern most corner of said parcel;
- 2) South 82°00'39" East, 299.96 feet to the eastern most corner of said parcel, said corner being marked by a 5/8" rebar with plastic cap stamped "LS 5671";
- 3) South 07°51'10" West, 200.86 feet to the southern most corner of said parcel, said corner being marked by a 5/8" rebar with plastic cap stamped "LS 5671";
- 4) North 81°54'53" West, 430.68 feet to the **POINT OF BEGINNING**, containing 73,278 square feet (1.682 acres) more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this legal description.

The net area for Parcel 1 as herein above described (Parcel 1 area minus the areas for the Building 762 & 780 Parcels) contains 15,131,376 square feet (347.369 acres) more or less, measured in ground distances, of which 2,171,539 square feet (49.852 acres) is comprised of submerged lands, and 12,959,837 square feet (297.517 acres) is comprised of wharf structures and uplands.

Parcel 2

A portion of the Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485); A portion of the Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded October 6, 1941, in Book 4121 of Official Records, Page 191 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4121 O.R. 191) ; A portion of the lands described in that certain Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S, District Court of the United States in and for the Northern District of California, Southern Division, recorded October 22, 1951, in Book 6566 of Official Records, Page 301 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6566 O.R. 301); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel:032, Image 660); A portion of the lands described in that certain Final Judgment as to Tract 5, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 16, 1951 in Book 6361 of Official Records, Page 334 in the Office of the Recorder of said Alameda County hereinafter referred to as 6361 O.R. 334); A portion of the lands described in that certain Final Judgment as to Parcel No. 6, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded May 23, 1960, Reel 092, Image 111 of Official Records, in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel:092, Image:111), all of which are more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 48°22'05" East, 5692.24 feet to the northern most corner of Parcel 1, Tract 1 as described in said Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S (6566 O.R. 301), said corner being the northwesterly terminus of the course "North 71°40'17" West 585.40 feet" in the description for said Parcel 1, Tract 1 (6566 O.R. 301), said corner being marked by a 2 ½" brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Page 1, Alameda County

Official Records, said corner being the **POINT OF BEGINNING** of Parcel 2 as herein described;

Thence, along the northeastern, southeastern and southwestern lines of said Parcel 1, Tract 1 (6566 O.R. 301) the following six courses:

- 1) South 70°28'41" East, 585.40 feet to an angle point in said line;
- 2) South 72°37'22" East, 182.32 feet to an angle point in said line;
- 3) South 76°59'49" East, 90.66 feet to an angle point in said line;
- 4) South 73°41'18" East, 136.19 feet to the eastern most corner of said Parcel 1 , Tract 1(6566 O.R. 301);
- 5) South 17°25'06" West, 105.53 feet to the southern most corner of said Parcel 1, Tract 1 (6566 O.R. 301) said corner being the beginning of a non-tangent curve concave southwesterly, having a radius of 682.89 feet and a central angle of 9°29'05", from which beginning the radius bears South 41°48'27" West;
- 6) along said curve to the left, an arc distance of 113.04 feet to the northeast corner of Parcel 2 described in said Indenture between the Southern Pacific Company and the United States of America (4121 O.R. 191);

Thence along the southeastern line of said Parcel 2 (4121 O.R. 191), South 30°58'28" West, 943.37 feet to the eastern most corner of Parcel 56444 as described in that certain Quitclaim Deed, recorded on February 13, 2002 as Document No. 2002072863 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002072863);

Thence along the northeastern line of said Parcel 56444 (Doc. 2002072863) the following two courses:

- 1) North 42°37'24" West, 128.15 feet to the beginning of a curve concave southwesterly, having a radius of 1647.00 feet and a central angle of 0°35'58";
- 2) along said curve to the left, an arc distance of 17.23 feet to a point on the southeastern line of Parcel A as described in an unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd R.S.C., dated December 17, said Parcel A being commonly referred to as the "Subaru Lot" (said Parcel A will hereinafter be referred to as the Subaru Lot); said southeastern line being the course "South 56°00'54" West, 39.01 feet" in the description of said Parcel A (the Subaru Lot);

Thence departing from the said northeastern line of Parcel 56444 (Doc. 2002072863), along the southeastern, eastern, northeastern and northern lines of said Parcel A (the Subaru Lot), the following twenty-four courses:

- 1) North 56°00'39" East, 30.42 feet to an angle point in said line;
- 2) North 49°48'18" East, 93.04 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped LS 6379;
- 3) North 40°33'22" East, 49.03 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped LS 6379;
- 4) North 37°08'59" East, 99.92 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped LS 6379;
- 5) North 30°42'24" East, 148.96 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped LS 6379;
- 6) North 25°50'39" East, 100.04 feet to the beginning of a curve concave westerly having a radius of 199.99 feet and a central angle of 25°52'29", said beginning of curve being marked by a nail and washer with tag stamped LS 6379;
- 7) along said curve to the left, an arc distance of 90.32 feet to the beginning of a curve concave southwesterly, having a radius of 354.97 feet and a central angle of 59°49'02", said beginning of curve being marked by a nail and washer with tag stamped LS 6379;
- 8) along said curve to the left, an arc distance of 370.59 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;
- 9) North 71°25'40" West, 87.02 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;
- 10) North 74°35'56" West, 103.17 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;
- 11) North 71°46'24" West, 32.44 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;
- 12) North 70°14'16" West, 101.26 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;
- 13) North 69°21'45" West, 49.64 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;
- 14) North 63°28'21" West, 40.88 feet to an angle point in said line, said point being marked by a ¾" brass tag in concrete stamped LS 6379;
- 15) North 66°07'36" West, 44.94 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;

16) North 69°32'54" West, 44.74 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;

17) North 72°38'25" West, 67.85 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped LS 6379;

18) North 70°15'39" West, 49.25 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped LS 6379;

19) South 80°41'00" West, 170.83 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped LS 6379;

20) North 87°09'05" West, 415.50 feet to beginning of a curve concave southerly, having a radius of 299.98 feet and a central angle of 25°11'31", said beginning of curve being marked by a 1" iron pipe with plug stamped LS 6379;

21) along said curve to the left, an arc distance of 131.90 feet to an angle point in said line;

22) South 67°39'24" West, 25.68 feet to the beginning of a curve concave southeasterly, having a radius of 199.99 feet and a central angle of 39°56'30", said beginning of curve being marked by a 1" iron pipe with plug and tack stamped LS 6379;

23) along said curve to the left, an arc distance of 139.42 feet to the beginning of a curve concave easterly, having a radius of 20.00 feet and a central angle of 29°55'43", said beginning of curve being marked by a 1 ½" brass disk and spike stamped LS 6379;

24) along said curve to the left, an arc distance of 10.45 feet to the intersection of said curve with the northeastern line of said Parcel 56444 (Doc. 2002072863), being a point on the course described as "South 65°41'47" East 135.08 feet" in the description of said Parcel 56444 (Doc. 2002072863);

Thence along said northeastern line of Parcel 56444 (Doc. 2002072863), the following seven courses:

1) North 65°41'40" West, 109.04 feet to an angle point in said line;

2) North 49°47'18" West, 162.81 feet to an angle point in said line;

3) North 54°46'46" West, 103.19 feet to an angle point in said line, said angle point being marked by a 1" iron pipe and CalTrans cap as shown on Record of Survey No. 1687 filed in Book 25 of Records of Surveys, at Pages 58-69, Alameda County Official Records;

4) North 47°07'33" West, 55.66 feet to the beginning of a curve concave southwesterly, having a radius of 1160.00 feet and a central angle of 12°07'10", said beginning of curve being marked by a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;

5) along said curve to the left, an arc distance of 245.37 feet to an angle point in said line, said angle point being marked by a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;

6) North 59°14'43" West, 262.30 feet to an angle point in said line, said angle point being marked by a 1" iron pipe and CalTrans cap as shown on said Record of Survey No. 1687;

7) North 57°29'34" West, 66.49 feet to a point on a non-tangent curve concave southerly, having a radius of 1252.80 feet and a central angle of 8°05'48", from which the radius point bears South 08°32'47" East, said beginning of non-tangent curve being on a point on the generally northern line of "Parcel 3, Baldwin Yard" as shown on Record of Survey No. 1704, filed in Book 26 of Records of Surveys, at Page 65, Alameda County Official Records;

Thence departing from said northeastern line of Parcel 56444 (Doc. 2002072863), along said generally northern line of "Parcel 3, Baldwin Yard", the following three courses:

1) along said curve to the right, an arc distance of 177.04 feet to the beginning of a non-tangent curve concave southerly having a radius of 3336.10 feet and a central angle of 19°16'27", from which the radius point bears South 00°34'42" East;

2) along said curve to the right, an arc distance of 1122.26 feet to an angle point in said line;

3) South 71°17'43" East, 326.69 feet to an angle point in said line;

Thence departing from said generally northern line, South 70°28'52" East, 223.98 feet to a point on the northwest line of Parcel 2, Tract 14 as described in said Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L (Reel: 32, Image:660) also being the northwest line of former 34th Street (now Wake Avenue);

Thence along said northwest line of said Parcel 2, Tract 14 (Reel: 32, Image:660), North 79°57'58" East, 36.10 feet to the eastern most corner of said lands described in said Final Judgment as to Parcel No. 6, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L (Reel: 92, Image: 111);

Thence departing from said northwest line of said Parcel 2, Tract 14 (Reel: 32, Image:660), South 13°11'35" East, 60.09 feet to a point on the southeast line of said Parcel 2, Tract 14, also being the southeast line of former 34th Street (now Wake Avenue);

Thence along said southeast line of said Parcel 2, Tract 14 (Reel: 32, Image:660), North 79°57'58" East 11.54 feet to the **POINT OF BEGINNING**, containing 700,924 square feet (16.091 acres) more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this legal description.

TOGETHER WITH:

Parcel 2A

All right, title and interest in and to Tract 1, Parcel 2 described in that certain Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S, District Court of the United States in and for the Northern District of California, Southern Division, recorded October 22, 1951, in Book 6566 of Official Records, Page 301 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6566 O.R. 301), being (1) all right title and interest in and to the existing over-head vehicular and/or railroad trestle located on said land (to the extent that the trestle still exists), and (2) A Perpetual Easement to use, patrol, maintain, operate, repair and/or reconstruct said existing over-head vehicular and/or railroad trestle in, over and across the property, including (but not by way of limitation) all such rights as were created by deed from Southern Pacific Railroad Company, a corporation, et al., to State of California, dated January 26, 1940 and recorded December 18, 1940 in Volume 4015 at page 159, Official Records of Alameda County (hereinafter referred to as 4015 O.R. 159), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 48°22'05" East, 5692.24 feet to the northern most corner of Parcel 1, Tract 1 as described in said Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S (6566 O.R. 301), said corner being the northwestern terminus of the course described as "North 71°40'17" West 585.40 feet" in the description of said Parcel 1, Tract 1 (6566 O.R. 301), said corner being marked by a 2 ½" brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Page 1, Alameda County Official Records;

Thence, along the generally northeastern line of said Parcel 1, Tract 1 (6566 O.R. 301) the following four courses:

- 1) South 70°28'41" East, 585.40 feet to an angle point in said line;
- 2) South 72°37'22" East, 182.32 feet to an angle point in said line;
- 3) South 76°59'49" East, 90.66 feet to an angle point in said line;

4) South $73^{\circ}41'18''$ East, 136.19 feet to the eastern most corner of said Parcel 1, Tract 1 (6566 O.R. 301), said corner being the **POINT OF BEGINNING** of Parcel 2A as herein described;

Thence South $73^{\circ}42'10''$ East, 3.70 feet to the beginning of a non-tangent curve concave southwesterly, having a radius of 534.64 feet and a central angle of $33^{\circ}28'21''$, from which the radius point bears South $36^{\circ}56'18''$ West;

Thence along said curve to the right, an arc distance of 312.34 feet to the beginning of a non-tangent curve concave westerly, having a radius of 3984.81 feet and a central angle of $1^{\circ}34'21''$, from which beginning the radius point bears North $70^{\circ}35'22''$ West;

Thence along said curve to the right, an arc distance of 109.36 feet to the beginning of a non-tangent curve concave westerly, having a radius of 4595.37 feet and a central angle of $0^{\circ}17'23''$, from which beginning the radius point bears North $69^{\circ}01'01''$ West;

Thence along said curve to the right, an arc distance of 23.24 feet;

Thence South $05^{\circ}47'40''$ East, 45.22 feet;

Thence South $25^{\circ}13'46''$ West, 15.00 feet to the beginning of a non-tangent curve concave southeasterly, having a radius of 655.70 feet and a central angle of $3^{\circ}38'17''$, from which the radius point bears South $54^{\circ}58'48''$ East;

Thence along said curve to the left, an arc distance of 41.63 feet to the beginning of a non-tangent curve concave southwesterly, having a radius of 434.65 feet and a central angle of $52^{\circ}03'51''$, from which beginning the radius point bears North $84^{\circ}55'35''$ West;

Thence along said curve to the left, an arc distance of 394.96 feet to the beginning of a non-tangent curve concave southwesterly, having a radius of 682.84 feet and a central angle of $1^{\circ}11'51''$, from which beginning the radius point bears South $44^{\circ}12'24''$ West;

Thence along said curve to the left, an arc distance of 14.27 feet;

Thence North $17^{\circ}25'06''$ East, 105.53 feet to the **POINT OF BEGINNING**, containing 34,969 square feet (0.803 acres) more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this legal description.

AND ALSO TOGETHER WITH:

Parcel 2B

That portion of the lands described in that certain Indenture between the United States of America and the East Bay Municipal Utility District, recorded August 22, 1973 at Reel 3494, Image 953 in the office of the Recorder of said Alameda County (Reel:3494, Image:953), being

an Easement for Army Drill Track Purposes over and across said portion of lands (Reel:3494, Image:953) being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 48°22'05" East, 5692.24 feet to the northern most corner of Parcel 1, Tract 1 as described in said Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S (6566 O.R. 301), said corner being the northwestern terminus of the course described as "North 71°40'17" West 585.40 feet" in the description of said Parcel 1, Tract 1 (6566 O.R. 301), being a point on the southeast line of Parcel 2, Tract 14 as described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of Alameda County (hereinafter referred to as Reel: 32, Image:660), said corner being marked by a 2 ½" brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Page 1, Alameda County Official Records;

Thence along said southeast line of said Parcel 2, Tract 14 (Reel: 32, Image:660), also being the southeast line of former 34th Street (now Wake Avenue) the following two courses:

1) North 79°57'58" East, 295.64 feet;

2) North 76°48'55" East, 942.61 feet to a point on a curve that is concentric with and 60.00 feet westerly of the western line of the Southern Pacific Company Right of Way, as said right of way is shown upon said unrecorded map (the Army Map), said western line also being the eastern line of said easement for drill track purposes (Reel:3494, Image:953), said concentric curve being a non-tangent curve concave westerly, having a radius of 7529.50 feet and a central angle of 4°36'37", from which the radius point bears North 75°31'12" West, said point on said concentric curve being the **POINT OF BEGINNING** of Parcel 2B as herein described;

Thence along said concentric curve to the left, an arc distance of 605.85 feet to the beginning of a compound curve concave westerly, having a radius of 10632.98 feet and a central angle of 1°47'52", from which beginning the radius point bears North 80°07'49" West, said compound curve also being concentric with and 60.00 feet westerly of the western line of the said Southern

Pacific Company Right of Way as said right of way is shown upon said unrecorded map (the Army Map);

Thence along said concentric curve to the left, an arc distance of 333.62 feet to the northeastern line of the said lands described in that certain Indenture between the United States of America and the East Bay Municipal Utility District (Reel:3494, Image:953);

Thence along said northeastern line South 58°07'37" East, 65.54 feet to a point on said western line of the said Southern Pacific Company Right of Way as said right of way is shown upon said unrecorded map (the Army Map), said point being the beginning of a non-tangent curve concave westerly, having a radius of 10692.98 feet and a central angle of 1°39'22", from which beginning the radius point bears North 81°47'10" West;

Thence along said western line of the said Southern Pacific Company right of way as said right of way is shown upon said unrecorded map (the Army Map) the following two courses:

1) along said curve to the right, an arc distance of 309.06 feet to the beginning of a compound curve, concave westerly having a radius of 7589.49 feet and a central angle of 4°22'23";

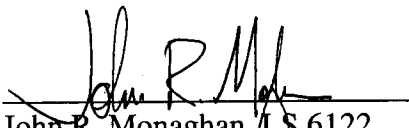
2) along said curve to the right, an arc distance of 579.26 feet to said southeast line of said Parcel 2, Tract 14 (Reel: 32, Image:660);

Thence along said southeast line of said Parcel 2, Tract 14 (Reel: 32, Image:660), South 76°48'55" West, 67.67 feet to the **POINT OF BEGINNING**, containing 54,841 square feet (1.259 acres) more or less, measured in ground distances, as depicted on the Plat to Accompany Legal Description, attached and hereby made a part of this legal description.

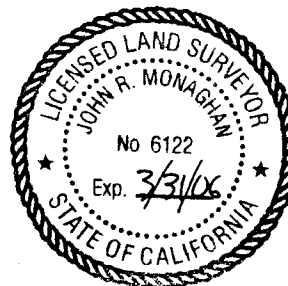
Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Records of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

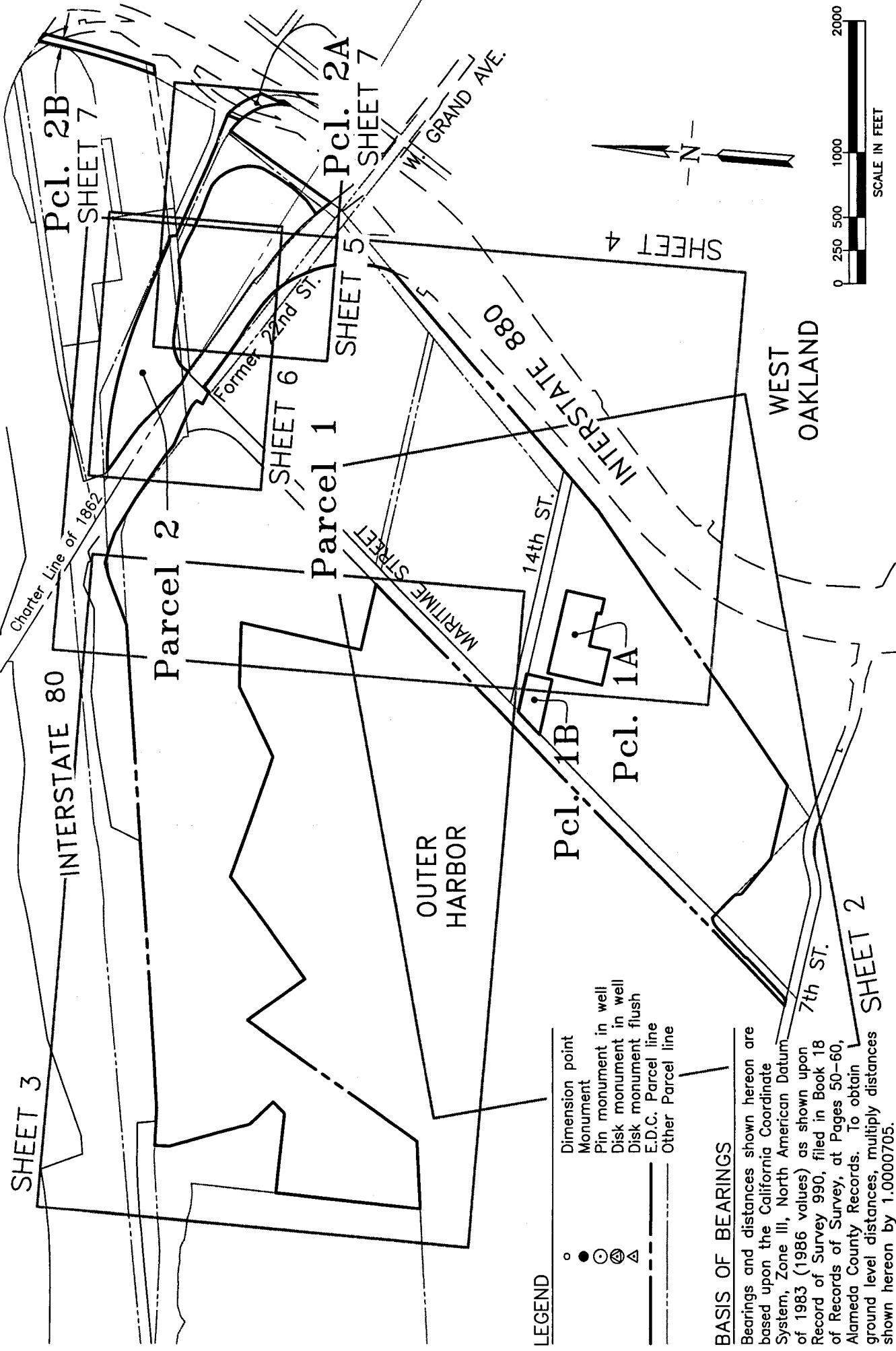
End of Description

I hereby state that this description and its accompanying plat were prepared by me, or under my direction, in April 2003.


John R. Monaghan, LS 6122
License Expires: 03/31/06

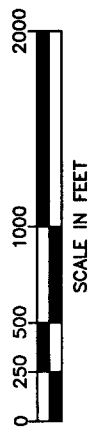
7/24/03
Date





- LEGEND**
- Dimension point
 - Monument
 - ⊙ Pin monument in well
 - ⊗ Disk monument flush
 - △ E.D.C. Parcel line
 - Other Parcel line

BASIS OF BEARINGS
 Bearings and distances shown hereon are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon Record of Survey 990, filed in Book 18 of Records of Survey, at Pages 50-60, Alameda County Records. To obtain ground level distances, multiply distances shown hereon by 1.0000705.



DRAWN BY: DAM	Field Bk:
CHECKED BY: JRM	Wrk. Ord: 104471
SCALE: 1" = 1000'	Data File:
DATE: 3/24/2003	Revision: 5
SHEET 1 OF 7	Rev. date: 7/24/2003
ATTACHMENTS:	
FILE LOC.: > EDC-PLAT_R5.DWG (1)	

EXHIBIT "A"
 PLAT TO ACCOMPANY LEGAL DESCRIPTION
 ECONOMIC DEVELOPMENT CONVEYANCE PROPERTY
 OAKLAND ARMY BASE

PORT OF OAKLAND
 LAND SURVEYS AND MAPPING

530 Water Street
 Oakland, California

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N51°26'28"W	40.85'
L2	S41°00'50"W	320.04'
L3	S48°54'49"E	5.00'
L4	S41°00'50"W	423.59'
L5	N81°57'10"W	8.34'
L6	S41°00'50"W	10.00'
L7	S48°59'10"E	12.14'
L8	N81°57'10"W	54.98'

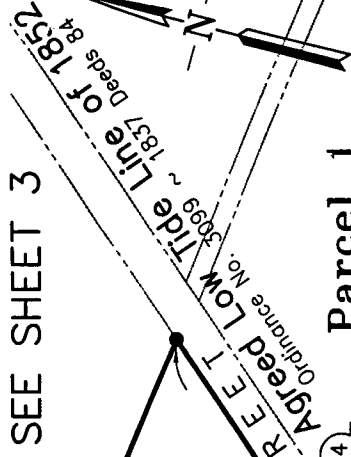
LINE TABLE		
LINE	BEARING	DISTANCE
L28	N56°26'26"W	360.91'
L29	N20°08'21"W	15.45'
L30	N14°24'00"W	25.00'
L31	N00°04'48"E	10.68'
L32	N51°26'30"W	210.65'
L33	N41°02'39"E	238.78'
L34	S82°00'39"E	299.96'
L35	S07°51'10"W	200.86'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	36°35'48"	137.91'	88.09'

NOTE: ALL AREAS SHOWN HEREON ARE MEASURED IN GROUND DISTANCES.

RADIAL TABLE		
RADIAL	BEARING	
R1	S12°23'22"E	

SEE SHEET 3



SEE SHEET 4

Parcel 1
15,131,376 Sq. Ft. NET
(347.369 Ac.)

U.S.A.
Pcl.2
RE:32 IM:660

U.S.A.
Pcl.1
4017 O.R. 485

U.S.A.
Pcl.14
Doc. 79-030025

U.S.A.
Pcl.10A
4189 O.R. 197

U.S.A.
Pcl.1
4453 O.R. 70

U.S.A.
Pcl.1
Doc. 99-222447

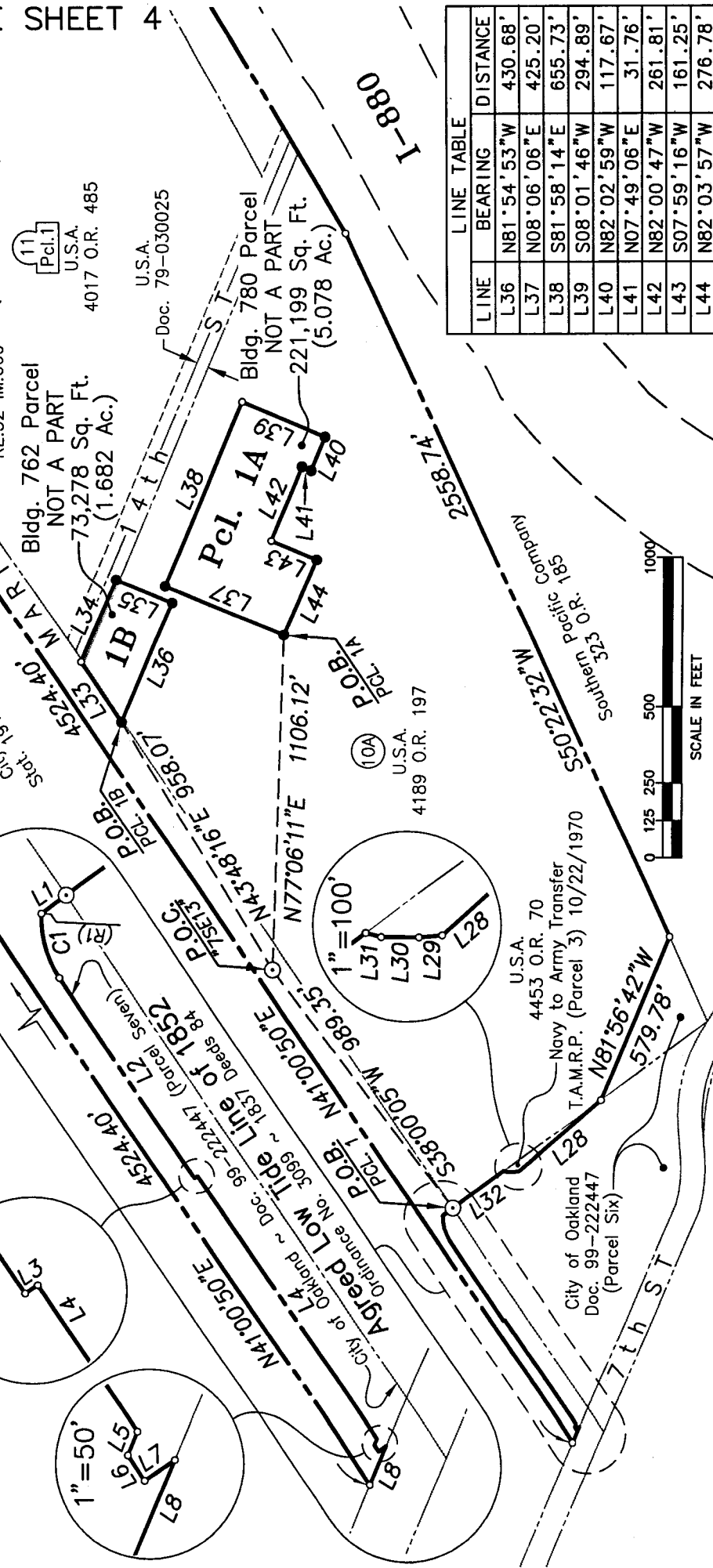
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Doc. 99-222447

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Pcl.1
Doc. 99-222447

U.S.A.
Pcl.1
Doc. 99-222447



LINE TABLE		
LINE	BEARING	DISTANCE
L36	N81°54'53"W	430.68'
L37	N08°06'06"E	425.20'
L38	S81°58'14"E	655.73'
L39	S08°01'46"W	294.89'
L40	N82°02'59"W	117.67'
L41	N07°49'06"E	31.76'
L42	N82°00'47"W	261.81'
L43	S07°59'16"W	161.25'
L44	N82°03'57"W	276.78'

DRAWN BY: DAM	Field Bk:
CHECKED BY: JRM	Wrk. Ord: 104471
SCALE: 1" = 500'	Data File:
DATE: 3/24/2003	Revision: 5
SHEET 2 OF 7	Rev. date: 7/24/2003
ATTACHMENTS:	
FILE LOC.: > EDC-PLAT_R5.DWG (2)	

EXHIBIT "A"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
ECONOMIC DEVELOPMENT CONVEYANCE PROPERTY
OAKLAND ARMY BASE

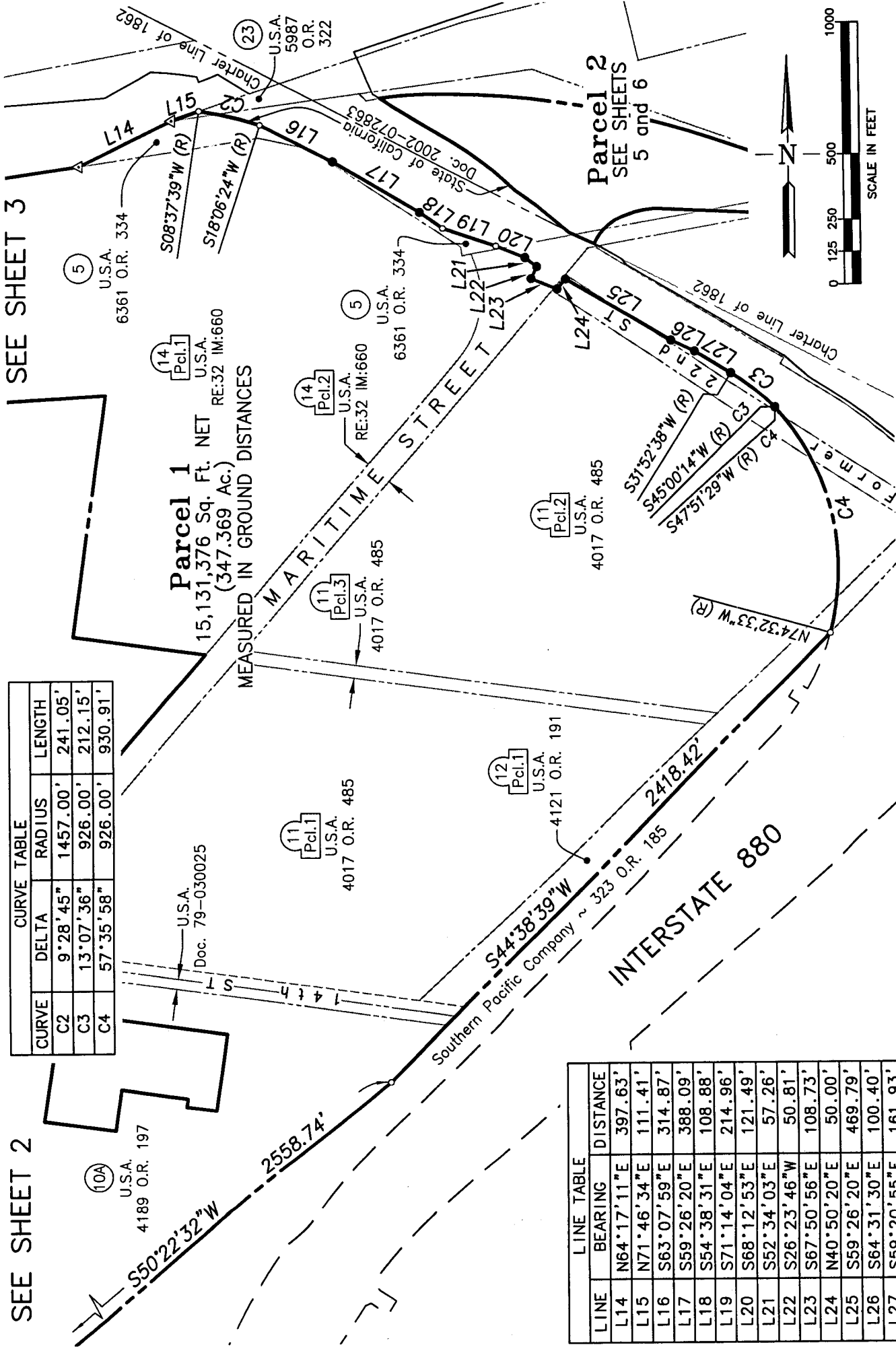
PORT OF OAKLAND
LAND SURVEYS AND MAPPING
530 Water Street
Oakland, California

SEE SHEET 2

SEE SHEET 3

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C2	9°28'45"	1457.00'	241.05'
C3	13°07'36"	926.00'	212.15'
C4	57°35'58"	926.00'	930.91'

LINE TABLE		
LINE	BEARING	DISTANCE
L14	N64°17'11"E	397.63'
L15	N71°46'34"E	111.41'
L16	S63°07'59"E	314.87'
L17	S59°26'20"E	388.09'
L18	S54°38'31"E	108.88'
L19	S71°14'04"E	214.96'
L20	S68°12'53"E	121.49'
L21	S52°34'03"E	57.26'
L22	S26°23'46"W	50.81'
L23	S67°50'56"E	108.73'
L24	N40°50'20"E	50.00'
L25	S59°26'20"E	469.79'
L26	S64°31'30"E	100.40'
L27	S59°20'55"E	161.93'



Field Bk:	
Drawn By: DAM	Wk. Ord: 104471
Checked By: JRM	Data File:
Scale: 1" = 500'	Revision: 5
Date: 3/24/2003	Rev. date: 7/24/2003
Sheet 4 of 7	
Attachments:	
File Loc.: > EDC-PLAT_R5.DWG (4)	

EXHIBIT "A"
 PLAT TO ACCOMPANY LEGAL DESCRIPTION
 ECONOMIC DEVELOPMENT CONVEYANCE PROPERTY
 OAKLAND ARMY BASE

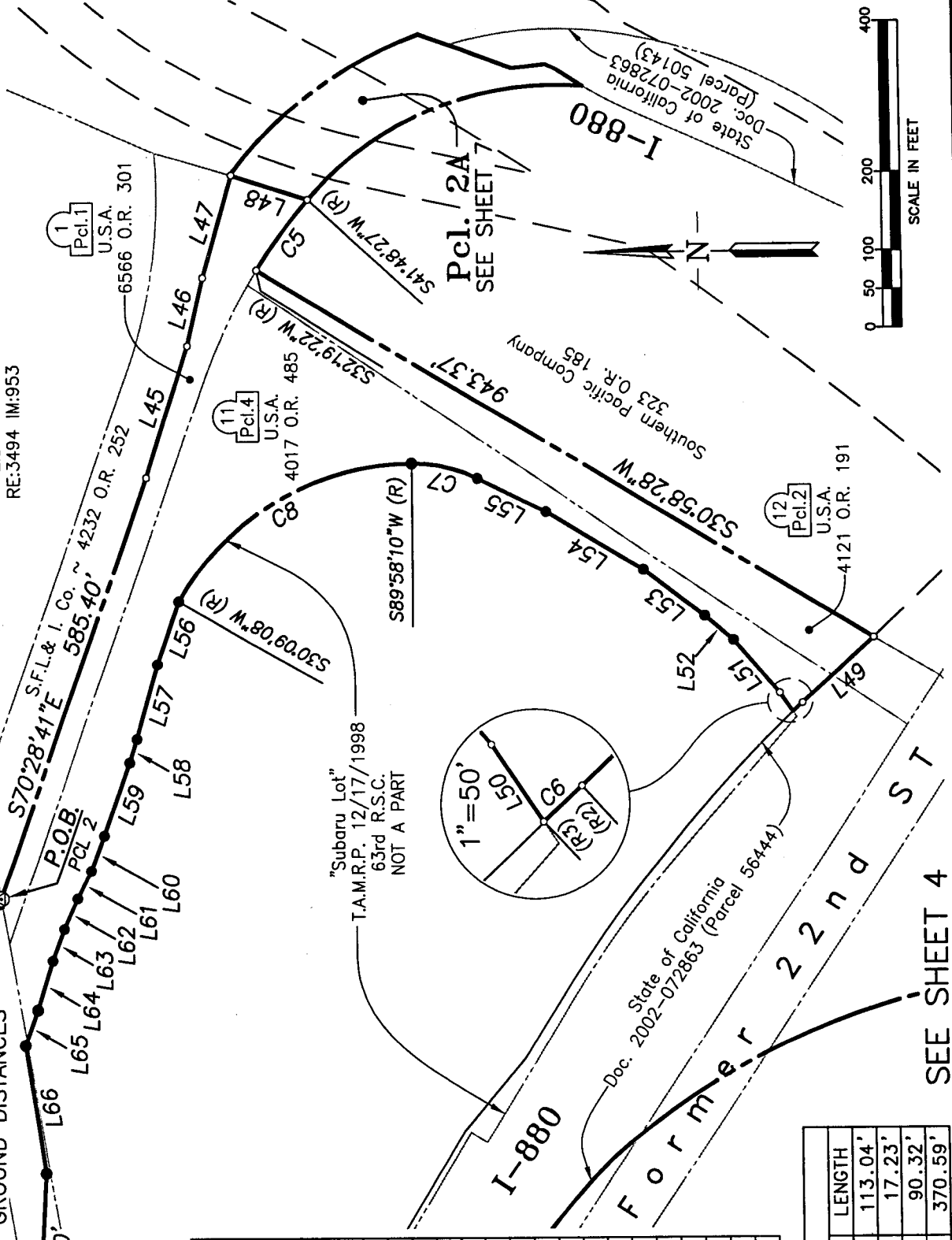
PORT OF OAKLAND
 LAND SURVEYS AND MAPPING
 530 Water Street
 Oakland, California

SEE SHEET 7

SEE SHEET 6 Parcel 2
700,924 Sq. Ft.
(16.091 Ac.)
MEASURED IN GROUND DISTANCES

RADIAL TABLE	
RADIAL	BEARING
R2	S47°22'36"W
R3	S46°46'37"W

E.B.M.U.D.
RE:3494 IM:953



LINE	BEARING	DISTANCE
L45	S72°37'22"E	182.32'
L46	S76°59'49"E	90.66'
L47	S73°41'18"E	136.19'
L48	S17°25'06"W	105.53'
L49	N42°37'24"W	128.15'
L50	N56°00'39"E	30.42'
L51	N49°48'18"E	93.04'
L52	N40°33'22"E	49.03'
L53	N37°08'59"E	99.92'
L54	N30°42'24"E	148.96'
L55	N25°50'39"E	100.04'
L56	N71°25'40"W	87.02'
L57	N74°35'56"W	103.17'
L58	N71°46'24"W	32.44'
L59	N70°14'16"W	101.26'
L60	N69°21'45"W	49.64'
L61	N63°28'21"W	40.88'
L62	N66°07'36"W	44.94'
L63	N69°32'54"W	44.74'
L64	N72°38'25"W	67.85'
L65	N70°15'39"W	49.25'
L66	S80°41'00"W	170.83'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C5	9°29'05"	682.89'	113.04'
C6	0°35'58"	1647.00'	17.23'
C7	25°52'29"	199.99'	90.32'
C8	59°49'02"	354.97'	370.59'

SEE SHEET 4

Field Bk:	
WRK. Ord:	104471
Data File:	
Revision:	5
Rev. date:	7/24/2003
SHEET 5 OF 7	
ATTACHMENTS:	
FILE LOC. >	EDC-PLAT_R5.DWG (5)

EXHIBIT "A"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
ECONOMIC DEVELOPMENT CONVEYANCE PROPERTY
OAKLAND ARMY BASE

PORT OF OAKLAND
LAND SURVEYS AND MAPPING
530 Water Street
Oakland, California

RADIAL	BEARING
R4	S62°17'06"E
R5	N87°47'11"E
R6	S00°26'59"E
R7	S00°34'42"E
R8	S18°41'45"W

(20)
U.S.A.
5303 O.R. 359

Parcel 2
700,924 Sq. Ft.
(16.091 Ac.)
MEASURED IN GROUND DISTANCES

(6)
U.S.A.
RE:92 IM:111

(14)
Pcl.2
U.S.A.
RE:32 IM:660

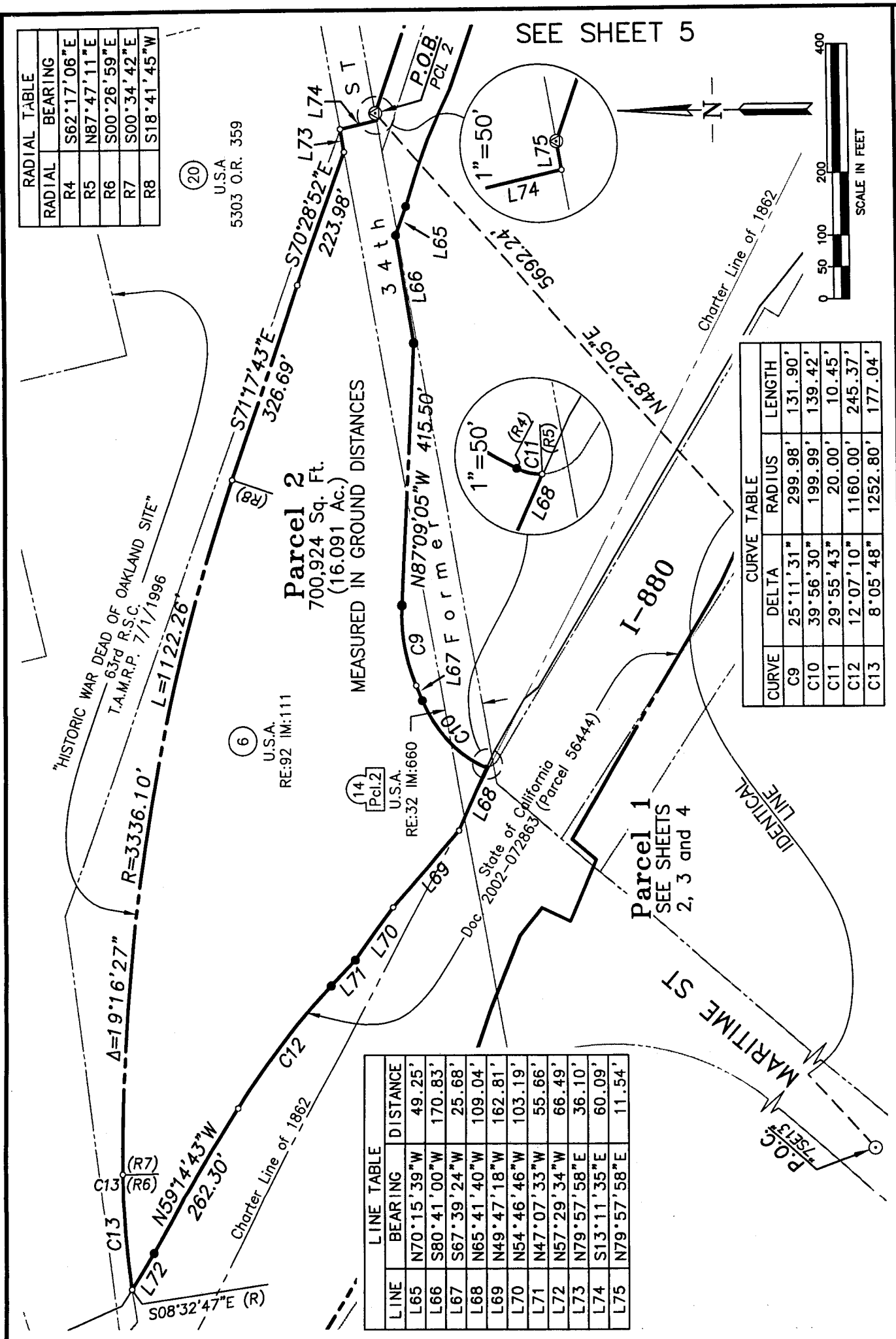
Doc
State of California
2002-072863
(Parcel 56444)

Parcel 1
SEE SHEETS
2, 3 and 4

SEE SHEET 5

CURVE	DELTA	RADIUS	LENGTH
C9	25°11'31"	299.98'	131.90'
C10	39°56'30"	199.99'	139.42'
C11	29°55'43"	20.00'	10.45'
C12	12°07'10"	1160.00'	245.37'
C13	8°05'48"	1252.80'	177.04'

LINE	BEARING	DISTANCE
L65	N70°15'39"W	49.25'
L66	S80°41'00"W	170.83'
L67	S67°39'24"W	25.68'
L68	N65°41'40"W	109.04'
L69	N49°47'18"W	162.81'
L70	N54°46'46"W	103.19'
L71	N47°07'33"W	55.66'
L72	N57°29'34"W	66.49'
L73	N79°57'58"E	36.10'
L74	S13°11'35"E	60.09'
L75	N79°57'58"E	11.54'



Field Bk:	
Wkr. Ord:104471	
Data File:	
Revision:5	
Rev. date:7/24/2003	
SHEET 6 OF 7	
ATTACHMENTS:	
FILE LOC.:> EDC-PLAT_R5.DWG (6)	

EXHIBIT "A"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
ECONOMIC DEVELOPMENT CONVEYANCE PROPERTY
OAKLAND ARMY BASE

PORT OF OAKLAND
LAND SURVEYS AND MAPPING
530 Water Street
Oakland, California

S.F.L. & I. Co.
4232 O.R. 252

Pcl. 2

L76

Pcl. 2A

L76

L76

L76

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L76

Parcel 2A
34,969 Sq. Ft.
(0.803 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2B
54,841 Sq. Ft.
(1.259 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2C
12,345 Sq. Ft.
(0.284 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2D
8,765 Sq. Ft.
(0.201 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2E
6,543 Sq. Ft.
(0.150 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2F
4,321 Sq. Ft.
(0.099 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2G
2,109 Sq. Ft.
(0.048 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2H
1,987 Sq. Ft.
(0.045 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2I
1,865 Sq. Ft.
(0.043 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2J
1,743 Sq. Ft.
(0.040 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2K
1,621 Sq. Ft.
(0.037 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2L
1,499 Sq. Ft.
(0.034 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2M
1,377 Sq. Ft.
(0.031 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2N
1,255 Sq. Ft.
(0.029 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2O
1,133 Sq. Ft.
(0.026 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2P
1,011 Sq. Ft.
(0.023 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2Q
889 Sq. Ft.
(0.020 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2R
767 Sq. Ft.
(0.018 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2S
645 Sq. Ft.
(0.015 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2T
523 Sq. Ft.
(0.012 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2U
401 Sq. Ft.
(0.009 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2V
279 Sq. Ft.
(0.006 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2W
157 Sq. Ft.
(0.004 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2X
35 Sq. Ft.
(0.001 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2Y
13 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2Z
1 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2AA
1 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2AB
1 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2AC
1 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2AD
1 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2AE
1 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

Parcel 2AF
1 Sq. Ft.
(0.000 Ac.)
MEASURED IN
GROUND DISTANCES

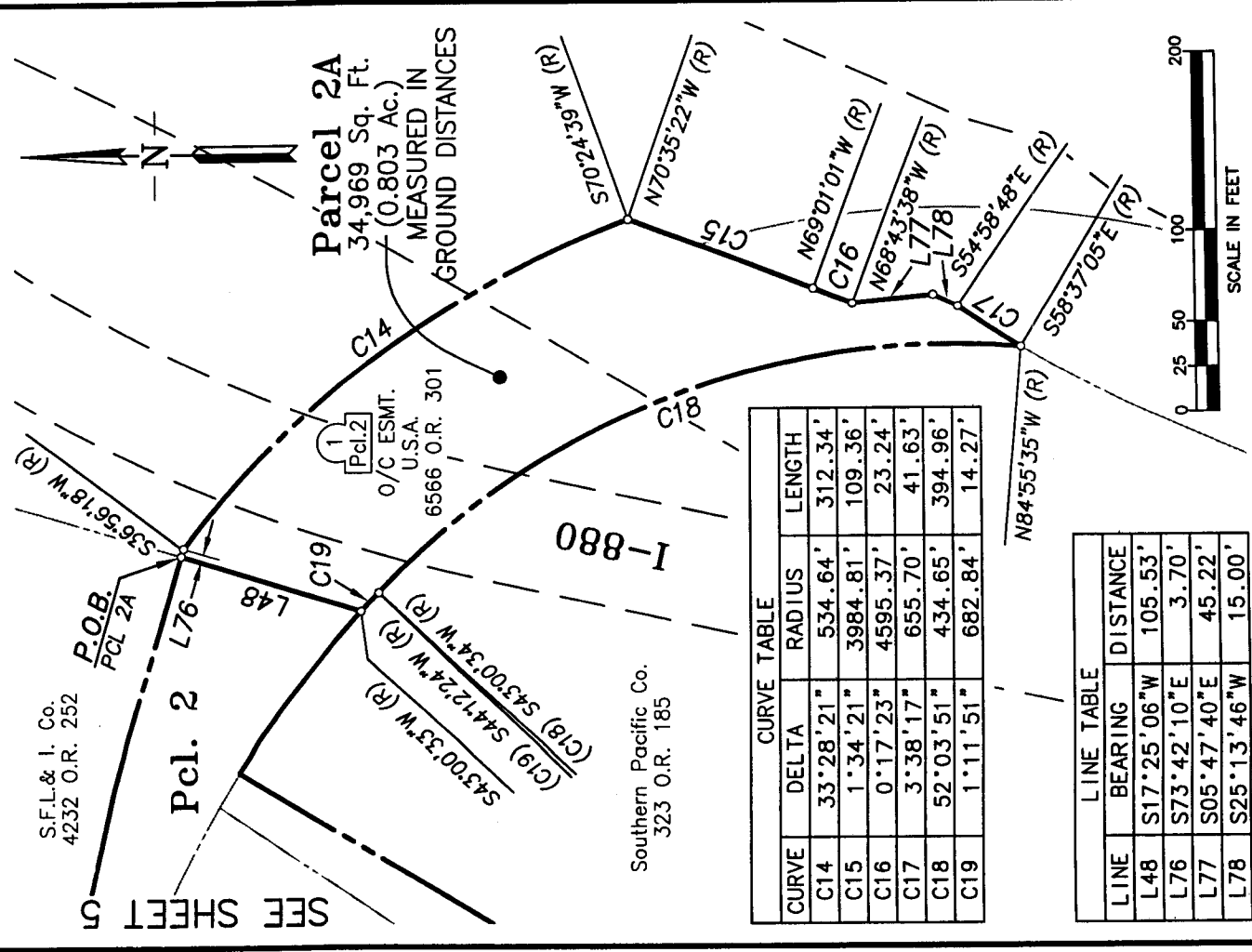
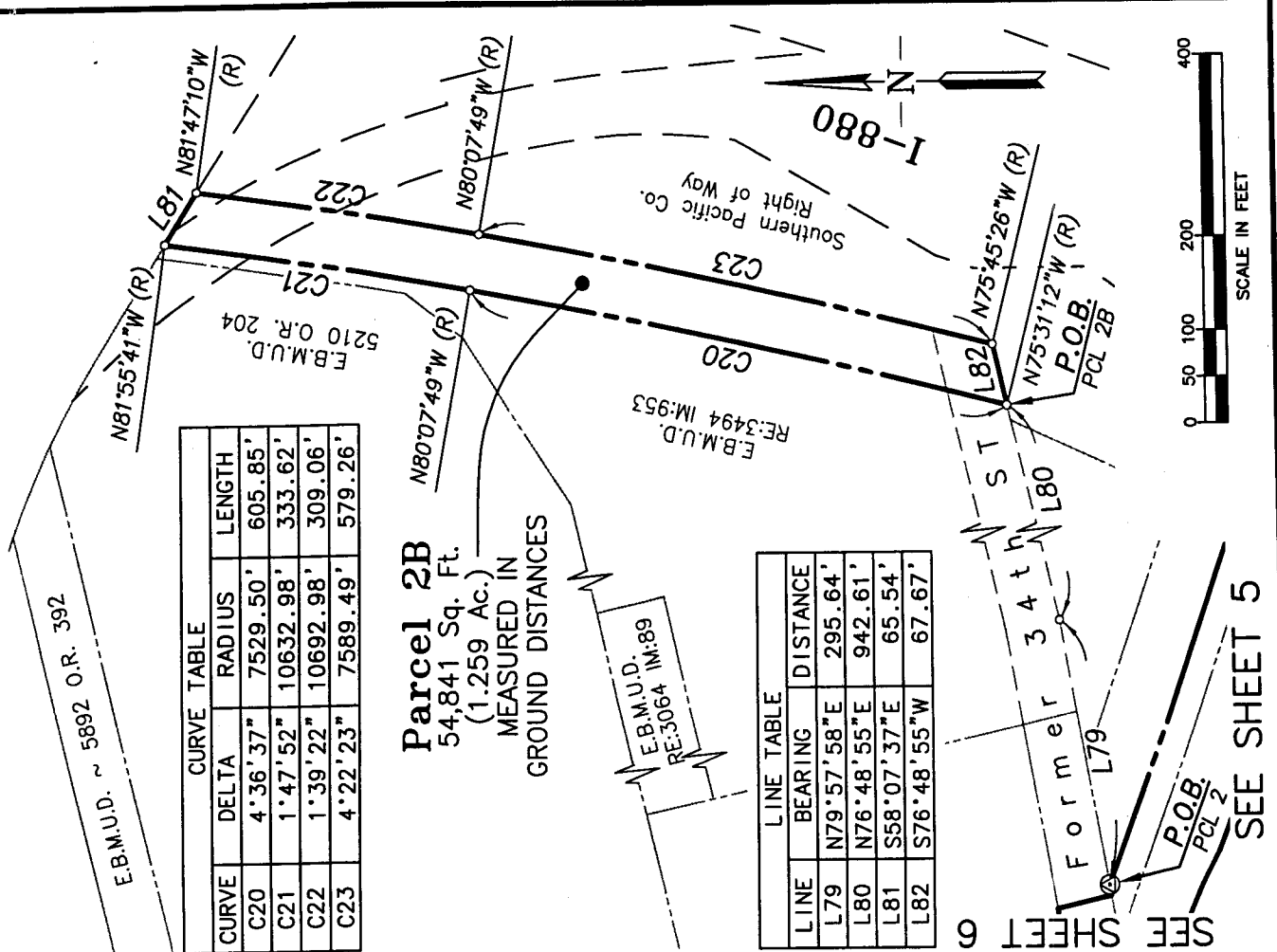
CURVE	DELTA	RADIUS	LENGTH
C20	4°36'37"	7529.50'	605.85'
C21	1°47'52"	10632.98'	333.62'
C22	1°39'22"	10692.98'	309.06'
C23	4°22'23"	7589.49'	579.26'

LINE	BEARING	DISTANCE
L79	N79°57'58"E	295.64'
L80	N76°48'55"E	942.61'
L81	S58°07'37"E	65.54'
L82	S76°48'55"W	67.67'

CURVE	DELTA	RADIUS	LENGTH
C14	33°28'21"	534.64'	312.34'
C15	1°34'21"	3984.81'	109.36'
C16	0°17'23"	4595.37'	23.24'
C17	3°38'17"	655.70'	41.63'
C18	52°03'51"	434.65'	394.96'
C19	1°11'51"	682.84'	14.27'

LINE	BEARING	DISTANCE
L48	S17°25'06"W	105.53'
L76	S73°42'10"E	3.70'
L77	S05°47'40"E	45.22'
L78	S25°13'46"W	15.00'

CURVE	DELTA	RADIUS	LENGTH
C14	33°28'21"	534.64'	312.34'
C15	1°34'21"	3984.81'	109.36'
C16	0°17'23"	4595.37'	23.24'
C17	3°38'17"	655.70'	41.63'
C18	52°03'51"	434.65'	394.96'
C19	1°11'51"	682.84'	14.27'



PORT OF OAKLAND
LAND SURVEYS AND MAPPING
530 Water Street
Oakland, California

EXHIBIT "A"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
ECONOMIC DEVELOPMENT CONVEYANCE PROPERTY
OAKLAND ARMY BASE

PORT OF OAKLAND
LAND SURVEYS AND MAPPING
530 Water Street
Oakland, California

DRAWN BY: DAM
CHECKED BY: JRM
SCALE: 1" = AS NOTED
DATE: 3/24/2003
SHEET 7 OF 7
ATTACHMENTS:
FILE LOC.: EDC-PLAT_R5.DWG (6)

EXHIBIT B

INTERIM LAND USE WAIVER



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Gray Davis
Governor

August 7, 2003

Mr. Andrew Clough
FOSET Environmental Manager
Oakland Base Reuse Authority
700 Murmansk Street, Suite 3
Oakland, California 94607

INTERIM LAND USE WAIVER, FORMER OAKLAND ARMY BASE, CALIFORNIA

Dear Mr. Clough:

Pursuant to the Consent Agreement regarding the proposed transfer of Oakland Army Base entered into by the Department of Toxic Substances Control (DTSC) and the Oakland Base Reuse Authority and the City of Oakland, acting by and through the Oakland Redevelopment Agency (collectively the City), DTSC and the City are required to execute a Covenant to Restrict Use of Property (Covenant) at the time of transfer of the proposed property. The Covenant restricts and prohibits, among other things, sensitive land uses, including, but not limited to, residential housing, schools, day-care facilities, hospitals and hospices. The Covenant allows the City to request a waiver, which DTSC may approve if it determines that such a waiver will be protective of public health and the environment. The City may further request that DTSC grant an extension to a waiver, which DTSC may approve if it determines that such extension will be protective of public health and the environment.

DTSC received a waiver request, dated March 9, 2003, from the City regarding interim use of four buildings/areas at the former Oakland Army Base. The City is the proposed future owner of 363.3 acres of the former Oakland Army Base which include the four buildings/areas that are the subject of the waiver request. The City requested that DTSC issue a waiver allowing certain restricted uses at four buildings/areas of the former Oakland Army Base upon property transfer. The City further requested that DTSC include the waiver approval as an exhibit to the Covenant to Restrict Use of Property that will cover the proposed transfer property.

Currently, the City leases the majority of the former Oakland Army Base from the Army and subleases multiple areas to various tenants. The following four buildings/areas are currently being used for sensitive uses:

Mr. Andrew Clough
August 7, 2003
Page 2

Building 796 -- Oakland Military Institute operates Building 796, a former Army barracks and administrative building, and several temporary classroom units located on the adjacent asphalted parking area as a school. Approximately 300 students attend classes at the Oakland Military Institute.

Building 740 -- Operation Dignity operates Building 740, a former bowling alley, as a 100-bed winter emergency relief shelter for homeless men and women.

Building 655 -- Child Development Program provides day care services to approximately 90 children in Building 655, a former Army child care center and adjacent fenced play areas.

Building 650 -- Milestones Human Services, Incorporated operates a licensed residential drug and alcohol treatment facility for homeless men and women in Building 650, a former Army guest house.

Appendix D to the Remedial Action Plan, dated September 27, 2002, further describes these buildings.

DTSC has reviewed existing investigation data associated with these buildings/areas and the lead concentrations in surface soil at the Building 655 play areas collected by the City. The existing data does not indicate a release of a hazardous substance. Based on a site inspection and review of all available data and available records for these buildings/areas, DTSC agrees to waive the restrictions and prohibitions in Section 4.01(a) of the Covenant to Restrict Use of Property for Buildings 796, 740, 655 and 690 and immediate surrounding areas with the following conditions:

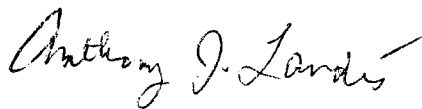
1. Buildings 796, 740, 655 and 650 shall be used by the same tenants or occupants as identified in this letter and the Remedial Action Plan, Appendix D.
2. The tenants or occupants shall continue the same uses as identified in this letter and the Remedial Action Plan, Appendix D.
3. The effective date of this waiver is concurrent with the date the City records the Covenant to Restrict Use of Property with the Alameda County Assessor's Office.
4. This waiver expires five (5) years from the date the Army transfers the property to the City via the Economic Benefit Conveyance, or five (5) years after the recordation of the Covenant to Restrict Use of Property, whichever is earlier.

Mr. Andrew Clough
August 7, 2003
Page 3

5. The City, tenants and occupants of Buildings 796, 740, 655 and 650 shall continue to comply with all other sections of the Covenant to Restrict Use of Property.
6. This waiver shall be attached to the Covenant to Restrict Use of Property as Exhibit B.

If you have any question regarding this matter, please contact Mr. Daniel Murphy at (510) 540-3772.

Sincerely,



Anthony J. Landis, P.E.
Chief
Northern California Operations
Office of Military Facilities

cc: Ms. Aliza Gallo
Executive Director
Oakland Base Reuse Authority
700 Murmansk Street, Suite 3
Oakland, California 94607

Ms. Diane Heinze
Associate Environmental Scientist
Port of Oakland
Post Office Box 2064
Oakland, California 94604-2064

Mr. Roger Caswell
BRAC Environmental Coordinator
Oakland Army Base
BRAC Transition Office
2475D West 12th Street
Oakland, California 94607

Mr. Andrew Clough
August 7, 2003
Page 4

cc: Ms. Xuan-Mai Tran (SFD-8-2)
Remedial Project Manager
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Ms. Adriana Constantinescu
Project Manager
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Mr. Daniel Murphy
Office of Military Facilities
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

EXHIBIT E

SUMMARY DESCRIPTION OF RAP SITES AND RMP LOCATIONS

Environmental Condition and Remedy Selection for RAP Sites

Former Oil Reclaiming Plant (ORP)/Building 1 Area

The former ORP consisted of a building and several aboveground tanks in the vicinity. Waste disposal practices likely resulted in the release of tarry residue to ground adjacent to these operations, which was covered by fill to construct Building 1 in 1941. On several occasions, the tarry residue has migrated to the surface under and around Building 1 and has been detected in 1994, 1998, 2000, and 2002. Laboratory analysis of the tarry residue has confirmed the presence of lead, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), polychlorinated dibenzodioxins (PCDDs), and polychlorinated dibenzofurans (PCDFs) at concentrations of concern. One sample also showed the presence of 1,2,3-trichloropropane (TCP). The tarry residue is very acidic with measured pH of 1 in some locations. The tarry residue is a Resource Conservation and Recovery Act (RCRA) hazardous waste subject to land ban restrictions when excavated.

The proposed remedial action for the tarry residue is to excavate and neutralize, as needed for transport, the pH of the material and high concentrations of lead with lime, fly ash, or other appropriate binders. It is assumed that this neutralized material would be disposed as a RCRA hazardous waste at an off-site permitted facility. Five years of post remediation groundwater monitoring is included for this RAP site.

The viability of this proposed remedial action depends upon obtaining a variance from federal land disposal restrictions (LDR) treatment standards for PAHs, PCDDs, and PCDFs in the tarry residue. Without a variance, the tarry residue may have to be incinerated to achieve LDR treatment standards for these underlying hazardous constituents. Incineration of the tarry residue is likely to be cost prohibitive and may necessitate that the untreated material be left in-place at the OARB, which would severely restrict redevelopment opportunities for the OARB. Therefore, the LDR variance is considered a critical component of this remedial action.

VOCs in Groundwater at Eastern End of Building 807

Volatile Organic Compounds (VOCs) in the shallow water-bearing zone were discovered by the Army in 1992 and consist primarily of vinyl chloride, cis-1,2-dichloroethene (cis-1,2-DCE), trans-1,2-dichloroethene (trans-1,2-DCE), trichloroethene (TCE), and 1,1,2,2-tetrachloroethane. The VOCs do not appear to be migrating; however, the residual VOC concentrations in groundwater may pose a vapor intrusion threat to building occupants if a building is constructed over the area in the future.

Therefore, in-situ chemical oxidation/reduction is proposed as the remedial action for the VOCs in groundwater here. Treatability studies, if needed, will be conducted to establish the types and amounts of oxidants or reductants required and the approximate grid spacing of injection points

across the surface area of the impacted shallow water-bearing zone. Five years of groundwater monitoring is included for this RAP site.

VOCs in Groundwater Near Buildings 808 and 823

Vinyl chloride and lesser concentrations of other VOCs are present in shallow groundwater in an area north of Building 808 and south of Building 823. The VOCs are not migrating, but the VOC-impacted groundwater poses a potential vapor intrusion threat.

Therefore, in-situ bioremediation of vinyl chloride in groundwater by injecting oxygen release compound (ORC) or another appropriate oxidant into the subsurface is proposed for this site. Five years of groundwater monitoring is included for this RAP site.

VOCs in Groundwater Near Building 99

An area of the shallow water-bearing zone near Building 99 is impacted with VOCs, including vinyl chloride and cis-1,2-DCE. No source or significant soil contamination has been identified; however, VOC-impacted groundwater poses a vapor intrusion threat.

Because vinyl chloride and cis-1,2-DCE are amenable to aerobic degradation by microorganisms, the proposed remedy for this site is in-situ bioremediation with ORC to remove or significantly reduce remaining chemical of concern (COC) quantities prior to redevelopment. Five years of groundwater monitoring is included for this RAP site.

Benzene and MTBE in Groundwater Near Former USTs 11A/12A/13A

Following removal of former fuel underground storage tanks (USTs) in the area near Building 828, significant concentrations of petroleum hydrocarbons, and benzene, toluene, ethylbenzene, and xylenes (BTEX) were found to remain in soil and shallow groundwater near the location of the former tanks. Additionally, methyl tertiary butyl ether (MTBE), which is a fuel oxygenate, was also detected in the shallow water-bearing zone.

Because impacted soil may act as a source of petroleum hydrocarbons and fuel constituents that could migrate to groundwater, the proposed remedy is to excavate contaminated soil in the vicinity of the former location of the tanks. Benzene and MTBE remaining in the shallow water-bearing zone is proposed to be treated by in-situ bioremediation using ORC. Five years of groundwater monitoring is included for this RAP site.

Building 991 Area

Building 991 was used as a locomotive engine maintenance shop. Petroleum hydrocarbons, pesticides, and lesser concentrations of other COCs have impacted soil and groundwater in the vicinity. MTBE has also been detected at low concentrations in the groundwater.

The proposed remedy is to excavate contaminated soil containing petroleum hydrocarbons, pesticides, or other COCs that may continue to leach COCs to groundwater and dispose of the soil as non-RCRA hazardous waste at an off-site permitted facility. Residual petroleum hydrocarbons in groundwater are proposed to be addressed by in-situ bioremediation using ORC. Five years of groundwater monitoring is included for this RAP site.

Building 99

Building 99 was initially used for ship manufacturing, then metalworking before the Army converted it to a vehicle and electrical maintenance shop, which included such activities as sand blasting, metal spraying, steam cleaning, and tractor-trailer repair. Analytical results of available soil samples do not suggest significant releases of VOCs, PAHs, total petroleum hydrocarbons (TPH) or metals have occurred from the building.

However, given the historical uses at Building 99 and the limited nature of the investigations, additional sampling at Building 99 is warranted. The proposed remediation, if required, consists of excavating soil with COCs greater than site-specific remediation goals after Building 99 has been demolished.

Environmental Condition and Remedy Selection for RMP Locations

Washracks, Sumps, Oil/Water Separators, and Miscellaneous Operations

Approximately 82 washracks, sumps, oil/water separators, and miscellaneous structures or activity areas have been identified at approximately 55 locations. These locations include: (1) areas requiring the removal of an existing subsurface structure, (2) areas requiring additional characterization, (3) areas where residual, impacted soil is anticipated and will be removed when encountered during infrastructure installation or redevelopment, and (4) areas with no currently identified environmental issues but which will be inspected for undiscovered contamination in accordance with the soil management protocols in the RMP.

For sites requiring removal of an existing structure or sites where impacted soil is anticipated, the proposed remedy assumes that an average of approximately 50 cubic yards (cy) of debris and contaminated soil will be removed at each site and disposed as non-RCRA hazardous waste at an off-site permitted facility. For sites requiring additional characterization, the site will be inspected and sampled during redevelopment as outlined in the RMP. Finally, for RMP locations where no contamination has been found to date, the area will be inspected and sampled in accordance with the RMP during redevelopment to confirm no contamination exists above the remediation goals at these locations.

Tanks

Approximately 93 USTs and aboveground storage tanks (ASTs) have been identified at approximately 73 locations on the OARB. These locations include: (1) tank sites that potentially require the removal of an existing tank, (2) former tank sites where residual, impacted soil is anticipated and will be excavated and disposed, when encountered, during infrastructure installation or redevelopment, and (3) former tank sites anticipated to possibly require excavation of residual, impacted soil or groundwater monitoring, and (4) former tank sites with no currently identified environmental issues but which will be inspected and sampled for undiscovered contamination in accordance with the soil management protocols in the RMP.

With respect to the proposed remediation, removal of any remaining USTs, including removal and disposal of impacted soil will be performed during infrastructure replacement or when otherwise encountered during new building construction as redevelopment proceeds. Soil

containing petroleum hydrocarbons will be managed and disposed at a permitted off-site facility. Additionally some of these tank sites will require groundwater monitoring to meet regulatory closure requirements specified by the RWQCB. Tank sites with no currently identified issues will be inspected and sampled in accordance with the RMP during redevelopment to confirm no contamination exists above the remediation goals at these locations.

Former Industrial and Chemical Handling Locations

There are seven such locations, and although no significant contamination was known to exist at these sites, historical operations suggested the likelihood for past chemical releases.

1. **Debris Area Near Building 99:** Approximately 15 tons of soil mixed with so-called “boiler debris” was excavated by the Army and disposed as a non-RCRA hazardous waste from a debris area near Building 99. Samples of the remaining debris in this area contained visible indication of slag-like material with lead, other metals, and benzo(a)pyrene at concentrations greater than the remediation goals. Other PAHs were detected but at concentrations below the remediation goals. In addition, petroleum hydrocarbons were found.

The proposed remedy for this site assumes that approximately 200 cy of soil mixed with debris will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility. Recent Phase II sampling has indicated this volume may be greater than originally estimated and some portion of it may be RCRA hazardous waste when excavated. The RMP provides mechanisms to address encountered field conditions for sites such as this with DTSC oversight as redevelopment proceeds.

2. **Building 85:** Although this building was used chiefly to carry out administrative functions, it was equipped with a photograph-processing laboratory and may have been used historically as a printing plant. No COCs were detected at concentrations greater than the remediation goals. However, some remediation may be necessary during site preparation for redevelopment, and the proposed remedy assumes approximately 100 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if such material is encountered.
3. **Building 812:** This building was used by the Army as an “ordnance” (meaning vehicles) maintenance shop and contained a welding booth, machine shop, and two repair and grease areas. Used oil tank 8A was formerly located at the southwest corner of the building. No contamination greater than remediation goals has been identified near Building 812.

Nevertheless, the proposed remedy assumes approximately 100 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if such material is encountered during redevelopment.

4. **Building 823:** This building contained a paint room, paint booth finishing room, and carpenter shop. It also may have been used as a heavy equipment maintenance facility. Identified chemical release sites near Building 823 include former UST A and the

VOC-impacted groundwater near Buildings 808 and 823. No other residual chemical sources in soil have been identified.

The proposed remedy assumes approximately 200 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if such material is encountered during redevelopment.

5. **Potential Drum Drainage Area East of Buildings 805 and 806:** In this area, Army personnel reportedly allowed damaged drums of chemicals to drain onto railroad track ballast. COC impacts appear minor and limited primarily to shallow soil where VOCs such as toluene, ethylbenzene and xylene have been found. The proposed remedy assumes the presence of VOCs renders approximately 250 cy of excavated soil as RCRA hazardous waste that will be disposed at an off-site permitted facility. Residual VOCs in the shallow water-bearing zone are proposed to be addressed through in-situ chemical oxidation/reduction, if needed.
6. **Former Motor Pool and Salvage Operations at Building 640:** The former Army motor pool and salvage area included a gasoline station possibly with a UST, a motor repair shop, a paint spray booth, several grease racks and washracks, vehicle storage sheds, gasoline pipeline, and several salvage warehouses, which were demolished when the Army constructed Building 640 in 1945. Although only low concentrations of petroleum hydrocarbons, PAHs and other COCs have been detected, the need for limited soil remediation is assumed.

The proposed remedial action assumes that approximately 250 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility. In addition, in-situ bioremediation of the shallow water-bearing zone is assumed to be necessary, if COCs greater than remediation goals are encountered during redevelopment. Five years of groundwater monitoring is included for this RAP site.

7. **Benzidine at Former Used Oil Tank 21:** Former used oil tank 21 was part of a facility constructed by the Army in 1986 for preparing privately owned vehicles for overseas transport and included a washrack and an oil/water separator. Structures were removed and contaminated soils were remediated in 1997. Following this cleanup, the soil contained residual concentrations of petroleum hydrocarbons, lead, and PAHs. However, residual concentrations of benzidine were also reported in the excavated area and stockpiled soil, which the Army disposed of at an off-site, permitted waste management facility.

Further testing will be performed here. The proposed remedy assumes approximately 50 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if COCs such as benzidine are encountered at greater than remediation goals.

Historical Spills and Stains

Numerous spills and stains have been observed over the years at the OARB, as found on

historical photographs or Army records. Given the use history of the OARB, most of these releases in stained areas likely involved petroleum hydrocarbons associated with diesel fuel or motor oil. Many were sampled during the Phase II investigations in 2002. As a consequence, under the proposed remedy, soil excavated during new construction will be inspected for staining or other signs of contamination. Protocols for inspecting, sampling and managing contaminated soil encountered during and after redevelopment are specified in the RMP.

Lead in Soil Around Buildings

The Army has identified the buildings that may contain Lead Based Paint based upon surveys and the age of construction. Redevelopment includes demolition of many of these buildings.

Under the proposed remedy, excavated soil with representative total lead concentrations less than 350 mg/kg may be reused anywhere on-site provided such reuse complies with the risk-based remediation goals and applicable law and regulations. Excavated soil with representative total lead concentrations between 350 mg/kg and the lead remediation goal of 750 mg/kg will be disposed at an off-site permitted facility unless specifically exempted by DTSC. Soil with representative lead concentrations exceeding the site-specific remediation goal of 750 mg/kg will be excavated and disposed at an off-site permitted facility.

Former PCB-Containing Transformers and Equipment Locations

Existing inventories list approximately 110 pieces of electrical transformers or other equipment that may have, or still, contain PCBs.

Under the proposed remedy, electrical equipment at the OARB that still contains PCBs will be removed from service and managed in accordance with TSCA regulations prior to building demolition. Outdoor areas where transformers were located will also be inspected and sampled for the presence of PCBs in concrete, asphalt, and underlying soil as specified in the RMP before improvements are razed. Soil containing PCBs greater than remediation goals will be excavated and disposed at an off-site permitted facility. Management of PCB-containing equipment and media contaminated by PCBs is also subject to U.S. EPA requirements under TSCA.

Storm Drains and Sanitary Sewers

The storm drain system at the OARB consists of approximately 110,000 linear feet (lf) of pipe that conveys water to the San Francisco Bay. The sanitary sewer system consists of approximately 25,000 lf of pipe and four pump or lift stations, which convey sewage to the EBMUD wastewater treatment plant. Army studies indicate that both the storm drain and sanitary sewer systems are in poor condition and presence of contamination in and around the pipes has been documented.

Under the proposed remedy, investigation of sediment inside the storm drains will be conducted in advance of infrastructure replacement. Interim remedial actions will be performed if COC-containing sediment is discovered. Such actions may consist of flushing segments of storm drain line with water to remove and capture the contaminated sediments for disposal at an off-site permitted facility. Alternatively, cement grout or similar means can be used to seal the ends of storm drain branch lines that are collapsed or otherwise can be removed from service without exacerbating flooding concerns.

Railroad Tracks

Approximately 26 miles of railroad track remain at the OARB. In addition, former railroad track ballast is covered with imported gravel in the former Baldwin Railyard. Typical contamination in old railyards can include petroleum hydrocarbons, PCBs, metal and asbestos, solvents, benzene, toluene, ethylbenzene, and xylenes (BTEX), and other VOCs. Additionally, surface soil in railyards may become contaminated with creosote, pentachlorophenol (PCP) or chromated copper arsenate (CCA) that originate from railroad ties. Herbicides sprayed near tracks may also be present. Testing at OARB indicates that benzo(a)pyrene, lead, and arsenic were detected at concentrations greater than remediation goals in some track locations.

The railroad tracks at the OARB will be removed or replaced during redevelopment. Protocols for inspecting and testing potentially contaminated railroad track sub-ballast have been established in the RMP. Under the proposed remedial action, sub-ballast found during redevelopment to contain COCs greater than remediation goals will be excavated for disposal at an off-site permitted facility or, if specifically approved by DTSC, may be incorporated into the on-site railroad beds upon which new tracks will be laid and covered with clean ballast.

Marine Sediments

The Army has identified COC impacts to marine sediments near storm drain outfalls from the portions of the OARB being transferred via EDC (Outfalls 5 through 7) as well as the adjacent Outfalls 8 through 11). These outfalls discharge to the Oakland Outer Harbor in San Francisco Bay.

The Army has concluded that marine sediments at Outfalls 5 through 7 “are unlikely to result in unacceptable adverse effects on aquatic or wildlife receptors,” therefore, no further action is proposed for those sediment locations.

Contaminants of concern have been detected at Outfalls 8 through 11, and the Army concludes from its ecological risk assessment that marine “sediments at Outfalls 8 through 11, if not capped in the future, may result in limited impacts to aquatic communities.” The Port of Oakland intends to fill 26 acres to provide additional terminal capacity and create two berths in the Oakland Outer Harbor (New Berth 21) as outlined in its Seaport Plan for 2020 and the EIR. The Port of Oakland’s project will result in covering the marine sediments adjacent to Outfalls 8 through 11, thereby addressing potential impacts.

EXHIBIT F

INTERIM USE BUILDINGS/AREAS

Building 796

Building 796 is a former Army barracks and administration building, which is now used as part of the Oakland Military Institute (National Guard College Preparatory Academy). The school includes several temporary classroom units located on asphalt on the adjacent parking area. The Oakland Military Institute is a Charter School facility established in partnership with the California National Guard and the Mayor of Oakland for students in grades 7-12. There are currently 160 7th-grade students enrolled in the 2001-2002 school year, and plans are to enroll 160 additional 8th-grade students in the school year beginning September 2002. The school is supported by a total of 25 to 40 teachers and administrators.

Building 740

Building 740, a former bowling alley, is home to Operation Dignity, a 100-bed winter emergency relief shelter for homeless men and women. The site is leased to the City of Oakland Community and Economic Development Agency, who funds the program. The program operates from January 15 through the end of April, and is open from 6:00 a.m. until 8:00 a.m. the following morning.

Clients are transported to the shelter by a free van, which picks up and drops off from designated sites in Berkeley and Oakland.

Building 655

Building 655 is a former Army childcare center, which is still used as such. The City of Oakland has been the grantee for the Head Start Program for 27 years. Known formally as the City of Oakland Life Enrichment Agency, Aging, Health & Human Services Head Start Program, the Child Development Program provides education, nutrition, health, and mental services to low-income children and families throughout Oakland. The program operates Monday through Friday, from 7:00 a.m. to 6:00 p.m., and is staffed by 10-12 full-time employees serving 85 to 91 children (60 families).

Building 650

Building 650 is a former Army guest house in which Milestones Human Services, Inc., through its Milestones-East Bay Center program, operates a licensed residential drug and alcohol treatment facility for homeless men and women in Building 650 under a contract the California Department of Corrections. Occupying the first floor of Building 650 (also known as Jacobs Guest House), the program offers a comprehensive set of services ranging from substance abuse treatment, literacy and education, life skills, employment preparation, placement, counseling, and aftercare services. There are nine full-time staff members for a resident population of 25. The program operates 24 hours per day, 7 days a week.