

ENCLOSURE 5
ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be placed in the deed to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at Hamilton Army Airfield.

1. INCLUSION OF PROVISIONS

The Grantee to whom the property is transferred shall neither transfer the property, lease the property, nor grant any possessory interest, privilege, or license whatsoever in connection with the property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

2. CERCLA ACCESS CLAUSE

The Government, the U.S. Environmental Protection Agency (USEPA), California Department of Toxic Substances Control (DTSC), the Regional Water Quality Control Board (RWQCB) and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Grantee, to enter upon the Property in any case in which a response action or corrective action is found to be necessary, after the date of transfer of the property, or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purposes:

- To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, test soil borings and other activities
- To inspect field activities of the Government and its contractors and subcontractors
- To conduct any test or survey related to the environmental conditions at the Property or to verify any data submitted to USEPA, DTSC or the RWQCB by the Government relating to such conditions
- To construct, operate, maintain or undertake any other response or remedial actions as required or necessary including, but not limited to monitoring wells, pumping wells and treatment facilities

3. NO LIABILITY FOR NON-ARMY CONTAMINATION

The Army shall not incur liability for additional response action or corrective action, found to be necessary after the date of transfer, in any case in which the person or entity to whom the property is transferred, or other non-Army entities, is identified as the party responsible for contamination of the property.

4. RESTRICTED TO RECREATIONAL/COMMERCIAL/INDUSTRIAL USE

The Department of the Army has undertaken careful environmental study of the property and concluded, with the Grantee's concurrence, that the highest and best use of the POL Hill Parcel property is limited, as result of its environmental condition, to recreational, commercial, and industrial uses. In order to protect human health and the environment and further the common environmental objectives and land use plans of the United States, the State of California and Grantee (City of Novato), covenants and restrictions shall be included to assure the use of the property is consistent with the environmental condition of the Property. These

following restrictions and covenants benefit the lands retained by the Grantor and the public welfare generally and are consistent with state and federal environmental statutes.

A. Restrictions and Conditions – Remediation. The Grantee covenants for itself, its successors, and assigns not to use the POL Hill Parcel for residential purposes. The Grantee, for itself, its successors or assigns covenants that it will not undertake nor allow any activity on or use of the property that would violate the restrictions contained herein. These restrictions and covenants are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable. Nothing contained herein shall preclude the Grantee from undertaking, in accordance with applicable laws and regulations and without any cost to the Grantor, such additional remediation necessary to allow for residential use of the Property. Upon completion of such remediation required to allow residential use of the Property and upon the Grantee's obtaining the approval of DTSC and the RWQCB and, if required, any other regulatory agency, the Grantor agrees, without cost to the United States, to release or, if appropriate, modify this restriction by recordation of an amendment hereto.

B. Restrictions and Conditions – Landfill Buffer Zone (Not to be Transferred at this time). The Grantee covenants for itself, its successors, and assigns that it will not construct any structures that could potentially impact the integrity, performance, or monitoring requirements of Landfill 26 within the buffer zone for the landfill that lies within the POL Hill Parcel Property. The Grantee, for itself, its successors, and assigns also covenants that it will not conduct any activities within the buffer zone for Landfill 26 that will alter or add additional drainage to the natural or engineered surface water drainage system for the landfill. The Grantee covenants for itself, its successors, and assigns that it will not construct any structures within 1000 feet of Landfill 26 without authorization of the CIWMB, EA, etc. There are several existing Regional Water Quality Control Board Orders (i.e., WDR 96-113, CAO 01-139, and TSO 01-140) that affect both the landfill site and the buffer zone. In addition, the groundwater treatment plant falls within the domain of these orders. While the groundwater extraction and treatment system has never been operated beyond initial startup, Order No. 96-113 specifically requires that the groundwater extraction well system and groundwater treatment plant be maintained so that they can be operated as needed.

In addition, a letter from the California Integrated Waste Management Board to Hamilton Army Air Field, dated June 18, 2003, states: "While Board staff preference would be to prohibit development other than non-irrigated open space, within 1000 feet of the Landfill 26 footprint, we realize that because of development potential, that is not a likely scenario. Therefore, we recommend that as a condition of transfer of this parcel to the City of Novato, any proposed future development at this site be required to comply with standards contained in Title 27 of the California Code of Regulations (27 CCR), Section 21190, Postclosure Land Use. This regulation requires that all postclosure land uses within 1,000 feet of the disposal area footprint shall be reviewed and approved by the Enforcement Agency. Furthermore, it states that all construction within 1,000 feet of the boundary of any disposal area shall be designed and constructed with an impermeable layer, venting pipes, and automatic gas sensors with periodic methane gas monitoring conducted inside all buildings or an equivalent design that prevents gas migration into structures."

5. GROUNDWATER RESTRICTIONS AND COVENANTS

A. Restrictions and Conditions. The Grantee covenants for itself, its successors, and assigns not to: (a) access or use groundwater underlying the POL Hill Parcel for any purpose, (b) construct or create any groundwater recharge area, unlined surface impoundment or disposal trench, or (c) conduct any activity that could interfere with, or adversely affect, the groundwater monitoring system or remedy. For the purpose of this restriction, "groundwater"

shall have the same meaning as in Section 101(12) of CERCLA. The Grantee, for itself, its successors or assigns covenants that it will not undertake nor allow any activity on or use of the property that would violate the restrictions contained herein. These restrictions and covenants are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable.

B. Enforcement. The restrictions and conditions stated in Section A benefit the public in general and the territory surrounding the Property, including lands retained by the United States, and, therefore, are enforceable by the United States government. The Grantee covenants for itself, its successors, and assigns that it shall include and otherwise make legally binding, the restrictions in Section A in all subsequent lease, transfer or conveyance documents relating to the POL Hill Parcel subject hereto.

C. Army Access. The Army and its representatives shall, for all time, have access to the Property for the purpose of operating/maintaining equipment, installing and/or removing groundwater monitoring wells, and to perform continued monitoring of groundwater conditions, allowing chemical and/or physical testing of wells to evaluate water quality and/or aquifer characteristics. The property owner shall allow ingress and egress of all equipment necessary to accomplish the same.

D. Agency Access. DTSC and the RWQCB 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 and RWQCB in order to protect the public health and safety and oversee the groundwater remediation activities.

6. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES

A. The Grantee is hereby informed and does acknowledge that all former buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to have contained lead-based paint (LBP). Grantee, its successors and assigns, are hereby informed that lead from paint, paint chips, and dust can pose health hazards if not managed properly.

B. Available information concerning known LBP and/or LBP hazards, the location of LBP and/or LBP hazards, and the condition of painted surfaces, contained in the Environmental Baseline Survey, have been provided to the Grantee. All purchasers must receive the federally approved pamphlet on lead poisoning prevention. The Grantee hereby acknowledges receipt of all of the information described in this subparagraph.

C. The covenants, restrictions, and requirements of this Section shall be binding upon the Grantee, its successors and assigns and all future owners and shall be deemed to run with the land. The Grantee on behalf of itself, its successors and assigns covenants that it will include and make legally binding, this Section, in all subsequent transfers, leases, or conveyance documents.

D. The Grantee and its successors and assigns covenant and agree that they shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property without complying with this NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, Grantee, its successors and assigns, specifically agree to perform, at its sole expense, the Grantor's abatement

requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

The Grantee, its successors and assigns, shall, after consideration of the guidelines and regulations established pursuant to Title X:

1. Perform a Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment;
2. Comply with the joint HUD and EPA Disclosures Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments;
3. Abate lead dust and lead-based paint hazards in pre-1960 residential real property as defined in paragraph above, in accordance with the procedures in 23 CFR 35;
4. Abate soil-lead hazards in pre-1978 residential real property, as defined above, in accordance with the procedures in 24 CFR 35;
5. Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as residential real property;
6. Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L);
7. Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the residential real property; and
8. Send a copy of the clearance documentation to the Grantor.

In complying with these requirements, the Grantee, its successors and assigns, covenant and agree to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the Property for residential purposes. The Grantee, its successors and assigns, covenant and agree to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

The Grantor assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incidental to possession and/or use of any portion of the Property containing lead-based paint. The Grantee, its successors or assigns, further agrees to indemnify and hold harmless the Grantor, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by or arising out of the possession and/or use of any portion of the Property containing lead-based paint. The obligation of the Grantee, its successors and assigns, shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

7. NOTICE OF POTENTIAL UNEXPLODED ORDNANCE

Based upon a review of existing records and available information, none of the former buildings and/or land proposed for transfer is known to contain unexploded ordnance (UXO). Notwithstanding the records search conducted by the GRANTOR, the parties acknowledge that, because this is a former military installation with a history of Ordnance and Explosives use, there is a potential for UXO to be present on the Property. In the event that the Grantee, its successors, and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department; the Army and competent Grantor, or Grantor-designated explosive ordnance personnel, will then be dispatched promptly to dispose of such ordnance at no expense to the Grantee.