

DRAFT DISPOSAL REPORT

OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA DISPOSAL REPORT

A.1. EXECUTIVE SUMMARY:

1. Installation or Civil Works Project:

The property is known as the Oakland Inner Harbor Tidal Canal (OIHTC), located within the cities of Oakland and Alameda, California.

The property consists of 1.2 miles of canal connecting the Oakland Inner Harbor just west of the Park Street Bridge to San Leandro Bay. There are no Army structures located on the property. Privately owned floating docks and moorings extend from adjacent commercial and residential properties into the canal and some of the adjacent properties have additional construction, such as patios and small sheds, supported by pilings which extend over the Property. Abandoned pilings are located along both sides of the canal, primarily along the Alameda portion.

2. The OIHTC was part of the plan conceived by Colonel G. H. Mendell, San Francisco District Engineer 1871-1895, for harbor improvements to the tidal inlet between Oakland and Alameda. Oakland was the first harbor to receive attention by the Corps of Engineers. Commercial ships could navigate as far east as Government Island, where the Estuary narrowed to an unnavigable channel. The channel ended a few hundred yards further east, whereupon a peninsula connected to the mainland.

The Oakland Inner Harbor Tidal Canal ("**Tidal Canal**") is 1.8 mile long, 400 feet wide and includes a portion of the waterway between Oakland and Alameda that was dredged between 1884 and 1905 by the US Army Corps of Engineers ("**Army Corps**") to create a tidal effect throughout the Oakland Estuary. The Tidal Canal covers approximately 85 acres and is has been owned by the Army Corps since its creation.

Most of the area bordering the Inner Harbor was marshlands that became the Oakland Harbor. The OIHTC provided a connection between the tidal basin and San Leandro Bay.

In 1884, the Federal Government took ownership of the OIHTC and commenced dredging operations to create the channel that is known as the OIHTC. Soon after the canal was constructed, adjacent property owners began to encroach on the Federal property by constructing wharfs and docks. On June 3, 1913, the Federal Government issued a license to all owners of property adjacent to the canal. This license granted these property owners permission “. . . to occupy, with open-work, nonpermanent structures for wharf purposes, on the portions of the strip of US property fronting their respective properties and situated between the pier head and bulkhead lines approved January 20, 1913, without special lease or charges of any kind. . . ” The rights granted by this license were “. . . revocable at any time when this area may again be required for purposes of navigation. . . ” In 1929, the pier head and bulkhead lines were combined thus rendering the original license invalid. Regardless of the question of validity of the 1913 license, any existing license would have expired automatically upon transfer of that particular adjacent parcel. Prior to the Regulatory Moratorium, the Corps issued several easements and licenses to construct, repair and maintain structures along the OIHTC, including boathouses and docks along the Alameda side of the canal.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

3. Brief summary of the proposed Real Estate action.

In accordance with Sections 3182(b) and (k) of WRDA 2007, the Corps intends to divest itself of ownership of a parcel of real property known as the Oakland Inner Harbor Tidal Canal (OIHTC), located within the cities of Oakland and Alameda. The OIHTC is a navigable waterway, approximately 85 acres in size, 400-feet wide, and nearly 2 miles long. A narrow strip of shoreline on each side of the canal is also included in the property footprint. The Federal property begins approximately 1,800 feet northwest of the Park Street Bridge and terminates at the mouth of San Leandro Bay.

The United States does not need the property for any Army related mission and the Corps believes that there is no longer a Federal interest in ownership of the canal. It should therefore be disposed of in accordance with Army regulations. The Corps intends to subdivide the property into several parcels and cede the Alameda side to the City of Alameda. Approximately 42 acres will be conveyed by quitclaim deed to the City of Alameda. San Francisco and Sacramento Districts are negotiating with the East Bay Regional Park District, (a County of Alameda agency), who has provided a letter of intent to take title to the remaining Oakland-side of the canal.

4. Congressional delegation information, including the nature and extent of Congressional interest and/or involvement, if any:

N/A. See attached HQ USACE Memo dated 5 Sept 2013.

5. Attach documentation, if any, required by AR 5-10, *Stationing*.

N/A

6. Describe impact of the disposal on installation or project resources:

N/A

7. Describe impact of the disposal on the local civilian community, if any:

The assumed without-project conditions serves as the baseline against which the proposed/preferred Action Alternative(s) will be evaluated. Future without-project conditions are likely to be the same as current existing conditions. There is no change in land use anticipated as a result of the proposed action of property transfer. The property along both the Alameda and Oakland sides of the canal is anticipated to remain residential, recreational and industrial/commercial.

Both shorelines along the canal are developed such that the removal of the moratorium on construction would not lead to significant newly developed shoreline. No change in current land use is anticipated as a result of the preferred alternative. Potential effects from future land use modifications or construction would have their own evaluation process.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

8. If there will be discrete parcels within one overall disposal action, then add a table of contents showing the designation for how the parcels are identified and set out within the Disposal Report.

N/A

9. Provide the results of the DOD screening performed by the supporting USACE district.

N/A. See attached HQ USACE Memo dated 5 Sept 2013.

A.2. GENERAL:

1. General description of the property:

Acreage: approximately 86 acres
Land character: Canal Property/Industrial
Installation Number: **L3-0222-OKLHRB**

The Oakland Inner Harbor Tidal Canal ("**Tidal Canal**") is 1.8 mile long, 400 feet wide and includes a portion of the waterway between Oakland and Alameda that was dredged between 1884 and 1905 by the US Army Corps of Engineers ("**Army Corps**") to create a tidal effect throughout the Oakland Estuary. The Tidal Canal covers approximately 85 acres and is has been owned by the Army Corps since its creation. The approximately 42-acre, 94-parcel property to be conveyed is identified as Parcels 2 and 4 through 96.

2. The property interest held by the **United States** in the affected real estate:

Fee simple title

3. Will the proposed disposal action trigger any reversions of title, automatic claimants such as Tribal property, or other encumbrances on conveyance or transfer?

No
 Yes, briefly describe issue and provide more details in Section D, Report of Title.

4. The property interest of the **Department of the Army (DA)** in the effected real estate:

Direct control. How acquired? Decree of Court dated 25 September 1882
 Permit, use agreement, etc., from another Federal agency. Details: _____
 Withdrawn from the public domain. Provide details of the withdrawal as well as discussion of relinquishment requirements set forth at 43 C.F.R. Part 2370, and attach information required by Appendix E, Notice of relinquishment.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

5. Federal Legislative Jurisdiction:

a. Type of Federal legislative jurisdiction:

Exclusive Concurrent Partial Proprietary

b. If other than proprietary, is jurisdiction to be relinquished **prior** to the divesting of title by the

USA or the transfer to another agency?

No

Yes, explain and provide any time requirements.

12-18 Months

c. Does the legislative jurisdiction have unusual terms and conditions that will impact the proposed disposal?

No

Yes, explain.

6. Cemeteries:

a. Is there a post cemetery located on the property?

No

Yes, attach summary of post cemetery record.

b. Is it eligible for transfer to the Veterans Affairs?

No

Yes, describe.

c. Does the area contain a privately-owned cemetery or burial plots?

No

Yes, attach data on location and ownership, including specific information on outstanding access rights. Describe any special restrictions or issues.

d. Is there a cemetery, owned by the USA, but with private burial plots or rights?

No

Yes, attach data on location, including specific information on outstanding rights and burial easements that have been issued over the years. Describe any special restrictions or issues.

7. List any site specific limitations, restrictions, or conditions to be included in the disposal document for compatibility with the operation of the installation:

There is no change in land use anticipated as a result of the proposed action of property transfer. The property along both the Alameda and Oakland sides of the canal is anticipated to remain residential, recreational and industrial/commercial.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

8. Utilities:

a. Utilities are currently provided by:

- public utility companies
- private utility companies
- installation facilities.

b. Describe the availability of utilities to the area after disposal and any actions required to transition from the current ownership to ownership after disposal.

NONE

c. Will new easements need to be issued to current providers under a Government contract to document current utilities after divesture of title from the USA?

- No
- Yes, explain.

9. Potential Future Use:

a. Industrial use

b. Data on other know highest and best use. Industrial use.

c. Are there airport facilities located on the property? No.

Has a determination from the Federal Aviation Agency (FAA) been obtained as to potential transfer for airport purposes?

N/A

10. Boundary and Encroachments:

Are there known boundary line issues or encroachments?

- No
- Yes, explain and attach map showing issue area.

There are several encroachments on both Alameda and Oakland boundaries.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

11. Tenants, Privatization and Outgrants:

- a. Is there a Residential Communities Initiative project on this property?
 No
 Yes, describe term remaining and any Purchase Option rights held by the lessee.
- b. Is the property encumbered by an Enhanced Use Lease or other long-term outlease?
 No
 Yes, describe term remaining and any First Right to Buy clauses in the lease.
- c. Are there other DOD entities or other Federal agencies in possession of portions of the property?
 No
 Yes, describe term remaining, facilities owned by the tenant, any requests by the tenant for transfer of the property, and any other relevant terms and conditions.

12. Stewart B. McKinney Homeless Assistance Act Of 1987 (McKinney Act) Requirements:

McKinney Act requirements do not apply to this action. Cite reason. See attached HQ USACE Memo dated 5 Sept 2013.

McKinney Act requirements apply, necessary screening has been completed, and no interest was expressed.

McKinney Act requirements apply, necessary screening has not been completed. Explain actions being taken.

If the property is being reported to GSA, request McKinney Act requirements be accomplished by GSA.

13. Any other known or reasonably foreseeable legal, policy, or project mission-related issues that may affect the proposed action relating to this property: N/A

14. Other Applicable Laws, Regulations, MOAs, etc., that should be addressed while prosecuting this action:

N/A

15. Funding: Estimated Costs to further process the disposal:

USACE District costs: \$20K

Installation costs: N/A

Funds are currently available

Yes No, how will costs be funded?

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

16. Date premises will be vacated:
N/A

17. Names of interested parties, if applicable:

- a. East Bay Regional Park District Oakland, California
- b. City of Alameda, California

18. Installation/Project Point of Contact:

Mrs. Bonieevee A. Delapaz
U.S. Army Corps of Engineers, San Francisco District
1455 Market Street
San Francisco, Ca 94102

19. **RECOMENDATION:**

I recommend that the proposed real estate disposal be approved and that the action proceed.

I do not recommend that the proposed real estate disposal be approved and recommend that no further review and processing be done.

2 Sep 16
Date

for 
DIANE SIMPSON
Chief, Real Estate Division

Encl

1. HQ USACE Memo dated 5 Sept 2013

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

B. IMPROVEMENTS:

1. BUILDING AND FACILITIES:

a. Are Government buildings and facilities included in the area:

No, skip to B.2.

Yes.

If Yes, give details on each building and improvement, including Inventory Identification No, Condition of the facilities, values shown in the official real property inventory, and estimated care and custody costs. List any Installed Equipment, fixtures or related personal property and if such is not to be sold with improvement, explain.

b. Floor plans and as built drawings: Copies may be attached, if it adds to the decision process, or cite where copies are available for review.

c. Type of funds used for construction: Appropriated Nonappropriated Other

d. Proposed method of disposal, if not being transferred with the underlying land.

e. Does disposal comply with MCA Program, Disposal of Structures, construction directive, and the installation master plan?

Yes

No, explain: Site identified as excess to USACE. No future Army requirements envisioned.

f. Mobilization statement:

N/A

g. If family housing facilities, then family housing information required by AR 210-50, Family Housing Management

h. Except for BRAC, explanation of proposals to dispose of structures transferred less than two years before to the using command.

N/A

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

2. HISTORICAL:

- a. Do any fixtures or related personal property have possible historic or artistic value?
 No
 Yes, provide specific identification and description of fixtures and related personal property that have possible historic or artistic value; explain recommended disposition.
- b. Has the buildings or improvements been identified as a historical and/or cultural resources?
 No
 Yes, see Section C for details and/or give a brief summary.

3. ASBESTOS:

a. If any building or improvement contains asbestos, include a description of the type, location, and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (e.g., fire-proofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the property.

N/A

b. If the property will be reported to GSA, then provide any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (The provisions of this subpart do not apply to asbestos on Federal property which is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499)

4. INFRASTRUCTURE – Utilities:

- a. Are there Utility distribution systems in the disposal area?
 Yes
 No.
If Yes, give details on each system, including Inventory Identification No, Condition of the facilities, values shown in the official real property inventory, and estimated care and custody costs. List any Installed Equipment, fixtures or related personal property and if such is not to be sold with improvement, explain.
- b. Type of funds used for construction:
 Appropriated Nonappropriated Other
- c. Proposed method of disposal, if not being transferred with the underlying land.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

5. INFRASTRUCTURE – OTHER:

a. Are there other linear systems or other infrastructure real property items in the disposal area?

Yes

No

If Yes, give details on each system, including Inventory Identification No, Condition of the facilities, values shown in the official real property inventory, and estimated care and custody costs. List any Installed Equipment, fixtures or related personal property and if such is not to be sold with improvement, explain.

b. Type of funds used for construction:

Appropriated Nonappropriated Other

c. Proposed method of disposal, if not being transferred with the underlying land.

N/A

6. Describe Demolition or Site Restoration to be performed, if any, prior to disposal.

N/A

7. Actions necessary to remove hazards and associated costs: N/A

8. Any other known or reasonably foreseeable legal, policy, or project mission-related issues that may affect the proposed action relating to the various improvements and facilities on the property.

N/A

9. Other Applicable Laws, Regulations, MOAs, etc., that should be addressed while prosecuting this action:

N/A

10. RECOMENDATION:

I recommend that the proposed real estate disposal be approved and that the action proceed.

I do not recommend that the proposed real estate disposal be approved and recommend that no further review and processing be done.

2 Sep 16
Date



DIANE SIMPSON
Chief Real Estate Division

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

C. ENVIRONMENTAL and CULTURAL CONSIDERATION:

1. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS:

a. The requirements under NEPA for the proposed action have been met as follows:

CX/REC. This action falls under one of the Categorical Exclusions (CX) contained in AR 200-2 (Environmental Effects of Army Actions) and/or ER 200-2-2 (civil works property only); **and** there are no extraordinary circumstances that result in the proposed action having an impact on the human environment that would require an EA or EIS. The environmental effect of the action has been considered. A Record of Environmental Consideration (REC) is attached, indicating the CX for this proposed action.

If the Disposal Report is required to be forwarded to HQDA, and the CX is based on a pre-existing NEPA analysis, then state:

for BRAC, NEPA document is on file at HQDA (Identify location, title and date: _____)

attached or pertinent extracts attached. If the entire analysis was too large to attach, then state where it can be viewed

_____.

EA/FONSI. The impact of this action is considered to be minimal or insignificant. The Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) is:

for BRAC, on file at HQDA (Identify location, title and date: _____)

attached or pertinent extracts attached. If the entire EA/FONSI was too large to attach, then state where it can be viewed See Encl. 6 of FOST.

EIS/ROD. The impact of this action is considered to be significant. An Environmental Impact Statement (EIS), or supplement thereto, along with the Record of Decision (ROD) is:

for BRAC, on file at HQDA (Identify location, title and date: _____)

attached or pertinent extracts attached. If the entire EIS was too large to attach, then state where it can be viewed _____.

b. For EA and EIS, identify mitigation actions, if any, which are required, costs, and responsible party for the mitigation: No mitigation actions are necessary.

c. If the EIS or EA covers more than the proposed action, explain how and where the action is analyzed and considered in the NEPA documentation: N/A, the EA only covers the proposed action.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

2. HISTORICAL AND CULTURAL RESOURCES:

The area has been surveyed for historical and cultural resources and there have been none identified on this property. This action is in compliance with the National Historic Preservation Act and other relevant laws; Executive Order 11593, Protection and Enhancement of the Cultural Environment; or any MOA's related thereto.

Historical and/or cultural resources have been identified on this property. This action has been coordinated with the State Historic Preservation Officer and/or the Advisory Council on Historic Preservation in accordance with 36 CFR 800. [Attach documentation] The following restrictions must be incorporated into the disposal document to protect the resource: _____.

Is there a Programmatic Agreement implementing Section 106 of NHPA, or other memorandum of agreement covering use of this property?

No

Yes, provide date, attach and/or explain.

The property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property on the National Register. Explain.

Are you aware of any effort by the public to have the property listed on the National Register, it must also include this information?

No

Yes

Native American graves have been identified on this property. Refer to requirements of the American Indian Religious Freedom Act and Native American's Graves Protection and Repatriation Act. Explain.

Archaeological sites or resources have been identified on this property. Refer to the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

3. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

a. A determination of the environmental condition of the property has been made based upon primary environmental surveys.

Yes

No, explain

b. Copies of the primary environmental surveys, e.g., Environmental Site Assessment, BRAC ISI, Environmental Baseline Survey (EBS), etc. are:

if BRAC, on file at HQDA (Identify location, title and date :_____).

attached or pertinent extracts attached. If the entire assessments are too large to attach, then state where they can be viewed.

Choose one:

Remedial actions have been taken so that the property is considered safe for disposal.

Remedial actions have not been taken. Provide details and justification for disposal in the current condition

c. A draft Finding of Suitability is attached, including the Environmental Protection Provisions applicable to this action, if any.

Yes.

No, explain:

d. The DOD Environmental Condition of Property (ECP) categories for the property is: 4

e. Storage, Release, or Disposal of Hazardous Substances

There is no evidence that hazardous substances were stored, released, or disposed of on the property in excess of the 40 CFR Part 373 reportable quantities. The appropriate CERCLA Notice and Covenant is set out in the Finding of Suitability and will be included in the Deed. Go to question 4.

Hazardous substances were stored for one year or more and released or disposed of on the property in excess of reportable quantities specified in 40 CFR Part 373. The appropriate CERCLA covenant and notice is included in the Finding of Suitability and will be included in the Deed.

4. Is there a Care and Custody plan?

No

Yes, Explain

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

5. Environmental Remediation Agreements:

There are environmental orders/agreements applicable to the property?

No, there are no environmental remediation orders or agreements applicable to the property being transferred.

Yes [Identify any environmental agreements or orders, e.g., Federal Facility Agreements, RCRA corrective action orders, etc.] California Regional Water Quality Control Board (RWQCB) Order R2-2002-0091 required development and implementation of a Corrective Action Plan for this parcel. All actions were completed and RWQCB Order R2-2014-0026 rescinded the previous order.

All remediation activities on the property, required by such agreement or order, are completed or in place and operating properly and successfully?

No, explain

Yes

6. Does the property have PCB containing equipment:

No

Yes, list type and location of equipment, e.g., transformer in Building XX, etc. This equipment is operational, properly labeled in accordance with federal and state regulations, and has been determined **not** to be leaking.

Yes No, explain.

7. CLEAN AIR ACT (Federal Conformity Requirements):

This action does not require a written conformity determination in accordance with EPA's rule because:

The installation is in an attainment area. NOTE: The EA or EIS must contain a statement that the action conforms to the applicable State or Federal Implementation Plan, if any, with adequate supporting analysis.

The installation is in a non-attainment or maintenance area and the action falls within an exemption in the rule. Attach a Record of Non-Applicability (RONA) in accordance with Army Guidance. Explain

This action is not exempt from the conformity regulation. Attach conformity determination. Describe the mitigation requirements or other restrictions, if any, which must be incorporated in the disposal documents.

8. COASTAL ZONE MANAGEMENT (CZM) (if applicable):

CZM is not applicable.

CZM is applicable and the proposed disposal is/will be consistent with the approved state CZM Plan. State any restriction that may need to be in the disposal document. Describe any commitments or agreements made under a CZM. Identify state CZM compliance certifications, if applicable.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

9. CLEAN WATER ACT (Section 401 - State Water Quality Certification) N/A

10. CLEAN WATER ACT (FEDERAL WATER POLLUTION CONTROL ACT Section 402 – National Pollutant Discharge Elimination System (NPDES) Permit or State equivalent from the EPA/appropriate state agency):

This disposal action will not involve the discharge of any pollutants into the waters of the United States.

This action will entail the discharge of pollutants into the waters of the United States.

11. CLEAN WATER ACT (Section 404(b)(1) - Fill Permit)

This action will not involve the discharge of any fill into the waters of the United States including wetlands.

This action will entail the discharge of fill into the waters of the United States, including wetlands. A Section 404(b) (1) Evaluation & Permit, and a Section 401 State Water Quality Certification are required. The following restrictions must be incorporated in the disposal document:

12. Wetlands Conservations

This property is not located within a wetlands area and, therefore, does not fall under the purview of Executive Order 11990 and no restriction are required in the disposal documents.

This property is located within a wetlands area and does fall under the purview of Executive Order 11990, accordingly, the following restrictions must be incorporated in the disposal document: _____

13. Highly Erodible Land (HEL) and Wetlands Conservation (WC).

a. Has the Natural Resources Conservation Service (NRCS) issued a Highly Erodible Land or WC determination for the subject real property?

No

Yes, provide summary of NRCS's findings and attach a copy of any determinations/delineations. List any restrictions or notices required to be incorporated into the disposal documents.

b. Are there soil and water conservation structures or other conservation systems to reduce soil erosion or substantial improve soil conditions on a field or group of fields containing highly erodible cropland on the premises?

No

Yes, provide description and location. List any restrictions or notices required to be incorporated into the disposal documents.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

14. Prime or Unique Farmlands (Farmland Protection Policy Act (FPPA))

The proposed real estate action is not a Federal project or activity as defined in the FPPA. No further FPPA inquiry is required.

The proposed real estate action is a Federal project or activity as defined in the FPPA, and may convert prime, unique, or important farmland to nonagricultural uses; further:

Natural Resources Conservation Service (NRCS) has evaluated and assessed the site and determined: _____ (include summary of NRCS findings, LESA farmland conversion impact rating score, and other pertinent data). Explain any impact on the disposal action.

It has been determined that the proposed project and farmland conversion is consistent with the FPPA and DA internal policies. Explain any impact on the disposal action.

It has been determined that the proposed project and farmland conversion is not consistent with the FPPA and DA internal policies. Explain any impact on the disposal action.

15. FLOODPLAIN:

Per a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available, or best available data if no such map is available, this property is not located within the 100 year floodplain and does not fall under the purview of Executive Order 11988.

This property is located within the 100 year floodplain and does fall under the purview of Executive Order 11988:

a. The disposal documents should contain the following restrictions on use under identified Federal, State or local floodplain regulations: _____

b. It is recommended that these additional restrictions on use be included in the disposal documents: _____

This property is located within the 100 year floodplain and does fall under the purview of Executive Order 11988, however, disposal will be to a Federal agency and no restrictions on use are required.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

16. ENDANGERED SPECIES:

This action will not jeopardize any threatened or endangered species of fish, wildlife, or plants or destroy or adversely modify designated critical habitat pursuant to the Endangered Species Act.

This action **may** jeopardizes threatened or endangered species of fish, wildlife, and/or plants or destroy or adversely modify designated critical habitat as identified on an attached map. Show status of the section 7 consultations with FWS/NMFS, including copies of any correspondence. List restrictions that must be incorporated in the disposal document to protect the habitat or species.

This action **will** jeopardizes threatened or endangered species of fish, wildlife, and/or plants or destroy or adversely modify designated critical habitat as identified on an attached map. Attach biological opinions, conference opinions or Early Alerts from FWS/NMFS, including copies of any correspondence and reasonable and prudent alternatives. List restrictions that must be incorporated in the disposal document to protect the habitat or species.

17. FISH AND WILDLIFE COORDINATION ACT:

This property was acquired under the FWCA for fish and wildlife purposes, is covered by Congressionally authorized fish and wildlife mitigation restrictions, is covered by a General Plan, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA.

No

Yes, can this property be utilized for wildlife conservation by the state agency exercising administration over wildlife resources upon that property?

No

Yes, transfer to this state agency for this purpose is recommended under authority of 16 USC § 667 or if it has value to the migratory bird program, to the Secretary of Interior under § 667b.

Yes, but transfer to this state agency for this purpose is not recommended.

This property is not covered by the FWCA

18. Did past activity involve the use of insecticide, fungicide, and rodenticide so that compliance with the Federal Insecticide, Fungicide, and Rodenticide Act was necessary, e.g. Agricultural, golf courses, restaurants?

Yes, explain any impacts on the disposal action; No known impacts

No

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

19. Will the proposed disposal impact an area designated under the Wild and Scenic Rivers Act?

- Yes, explain
- No

20. Is there Asbestos Containing Material (ACM) in the buildings?

No, there is no evidence that buildings or structures with ACM are located on the property.

Yes, this is covered in the environmental assessments and in the Finding of Suitability with appropriate provisions set out. **[Cite Asbestos Survey (if any)]** Generally, describe condition, type, and any pre-disposal recommendations:

The ACM does not currently pose a threat to human health or the environment because all friable asbestos that posed an unacceptable risk to human health has been removed or encapsulated.

Any remaining friable asbestos that has not been removed or encapsulated will not present an unacceptable risk to human health because No occupancy of facilities to cause disturbance.

21. Are any buildings known or presumed to contain Lead Based Paint (LBP)?

No, none known and/or based on the age of the buildings (constructed after 1978), no buildings on the property are presumed to contain lead-based paint.

Yes, this is covered in the environmental assessments and in the Finding of Suitability with appropriate provisions set out. **[Cite LBP Survey (if any)]** Generally, describe condition, type, and any pre-disposal recommendations:

The assumption is all facilities constructed prior to 1978 contain LBP to some degree.

The property was not used for residential purposes and the transferee does not intend to use the property for residential purposes in the future.

The property was used for residential purposes and the transferee intends to use the property for residential purposes in the future. The deed will include a lead-based paint warning and covenants.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

22. MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

Based on a review of existing records and available information, none of the buildings or surrounding land proposed for transfer are known or suspected to contain Munitions and Explosives of Concern (MEC). *[Editorial Note: The Finding of Suitability should explain the basis for concluding there is no MEC on the property, e.g., the property was historically used as an administrative area and no record of MEC being discovered on the property, etc.]*
Go to next Question.

The property includes a site that was previously used for _____ **[Describe munitions-related activities, e.g., live-fire training or testing, munitions manufacturing, demilitarization, such as open burning (OB) or open detonation (OD), or renovation, etc.]** that could result in MEC being known or suspected to be present.

A Munitions Response was conducted on (date) and _____ **[Describe Munitions Response, e.g., surface removal, subsurface removal to detection.]**

Coordination with HQDA, DACS-SF and DAMO-SWS is attached with the Land Disposal Site Plan (LDSP). Reference AR 385-64, "US Army Explosives Safety Program."

The _____ **[Statement of MEC Removal or other appropriate document.]** concluded _____ **[Summarize Statement recommendations.]**

A copy of the _____ **[Statement of MEC Removal or other appropriate document.]** is available for review at _____.

The property has been remediated using the most appropriate technology consistent with the proposed disposal of the property.

Transfer is to a non-Federal entity and due to the potential that MEC could remain below the clearance level, the deed will include a MEC Notice

Transfer is to another Federal agency for compatible use of surface decontaminated real property, subject to the following limitations, restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection: _____

Access rights should be reserved to implement any monitoring plan.

23. WASTE DISPOSAL (The Solid Waste Recovery Act, as amended; Resource Conservation and Recovery Act (RCRA)).

a. Waste treatment facilities, landfills, or other waste disposal sites:

are not located on the site.

are located on the site. Identify sites and attach a map showing location. Describe operating status of site. Do they have appropriate RCRA permits? Explain.

b. Treatment, disposal or storage of waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity

were not located on the site

were located on the site. Identify sites. Are closed sites noted on the site map?

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

24. UNDERGROUND AND ABOVE-GROUND STORAGE TANKS (UST/AST)

a. Current UST/AST Sites:

There are no UST/AST on the property.

There are _____ underground and/or _____ above-ground petroleum storage tanks (UST/AST) on the property.

1. Petroleum Product Releases.

The Finding of Suitability covers petroleum product releases, if any, which occurred at the sites:

Yes

No, explain. _____

2. Current compliance of the sites:

The UST on the property are in compliance with current laws and regulations:

Yes

No.

The AST for fuel or other regulated substances on the property are in compliance with current laws and regulations:

Yes

No.

b. Former UST/AST Sites –

There were no UST/AST on the property.

There were _____ underground and/or _____ above-ground petroleum storage tanks (UST/AST) on the property that have been removed or closed in place.

1. The Finding of Suitability covers petroleum product releases, if any, which occurred at the sites:

Yes

No, explain.

2. Maps showing the location of any UST closed in place are available, as required by law.

Yes. Either attach or explain where they are located.

No, explain.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

25. Non-UST/AST Storage, Release, or Disposal of Petroleum Products

There was non-UST/AST storage of petroleum products in excess of 55 gallons for one year or more on the property.

1. The Finding of Suitability discusses the type of petroleum activities:

There was no evidence of petroleum releases in excess of 55 gallons as a result of these activities.

Petroleum product release or disposal in excess of 55 gallons occurred at the following buildings or areas, and the Finding of Suitability discusses in detail.

There is no evidence that non-UST/AST petroleum products in excess of 55 gallons were stored for one year or more on the property.

26. Will the proposed disposal activity require compliance with the Toxic Substances Control Act (15 USC, Chapter 53); or other special purpose environmental laws? No

27. Are there any other conditions that exist on the property that should be considered in the decision to dispose? No. There are two known actions on adjacent properties that have or might migrate to this parcel. Park Street Landing located at 2301-2337 Blanding Avenue, Alameda, CA has a known release of petroleum product. The Alameda County, Environmental Health Services is working on the resolution with the adjacent property owner. The Allied Engineering and Production Corporation site located at 2421 Blanding Avenue has documented the migration of contaminants onto the federal property. The RWQCB is working on the resolution and cleanup of this site with the responsible party (property owners). In conversations with the RWQCB, they have expressed knowledge that the federal government was not responsible for the current releases and they are not pursuing naming the federal government as a potential responsible party. There are no known federal actions associates with these properties. Both properties have full involvement of the appropriate oversight agencies. There is no reason to expect any concerns or issues related to these properties to arise due to the disposal of the federal property.

28. ADDITIONAL COMMENTS:

29. RECOMENDATION:

I recommend that the proposed real estate disposal be approved and that the action proceed.

I do not recommend that the proposed real estate disposal be approved and recommend that no further review and processing be done.

17 Aug 2010
Date


Jessica Burton Evans
Chief, Environmental Section

OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA DISPOSAL REPORT

D. DISPOSAL REPORT:

D. TITLE REPORT FOR: Oakland Inner Harbor Tidal Canal, Oakland California (Site Number L3-0222-OKLHRB)

1. Description of Property:

The OIHTC property consists of approximately 85 acres located within the Oakland Inner Harbor Tidal Canal, which spans the stretch of water that separates the City of Alameda from the City of Oakland, in Alameda County. The property begins just southeast of Coast Guard Island and extends to San Leandro Bay. See Figures 1 and 2. Detailed property maps showing parcel and federal boundaries are located in Appendix A.

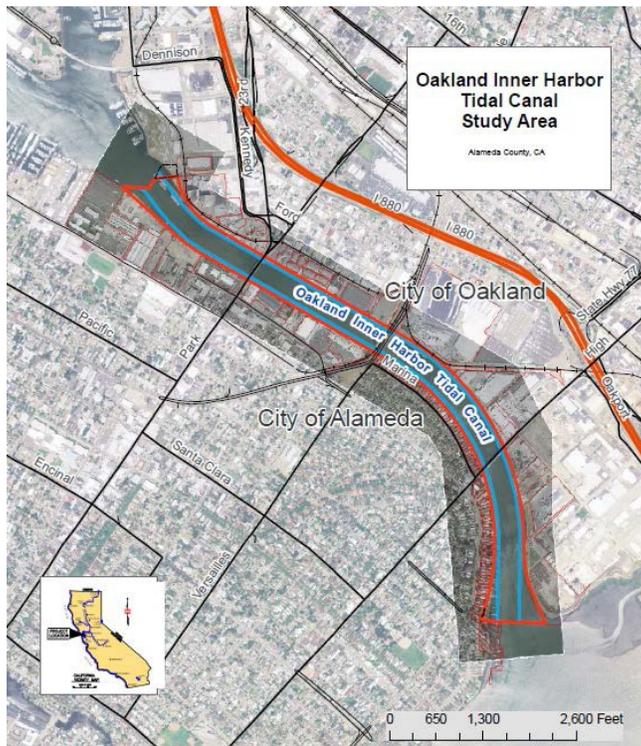
The OIHTC is entered via the San Francisco Bay and the Oakland Inner Harbor. Oakland Harbor is located in the City of Oakland, in Alameda County, California, along the eastern portion of San Francisco Bay. The strip of land is nearly 400 feet wide, including an upland strip of up to 50 feet wide on each side, and is almost two miles long. One portion is in the City of Oakland, and the other in the City of Alameda.

Figure 1 – Location of Oakland Inner Harbor Tidal Canal



OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA DISPOSAL REPORT

Figure 2 – Aerial Photo of OIHTC



2. Date and How Title was Vested in U.S.:

Decree of Court dated 25 September 1882

3. Exceptions, Reservations, Conditions and Restrictions Relating to the Title Acquired:

None

4. Title Insurance and Opinions:

The OIHTC Report on Government's Title may be made available for transmittal by contacting CESPCK-RE, if needed, and can be viewed at USACE, Sacramento District.

5. Easements or Other Encumbrances:

Easement No. 040167C6500069
Easement No. DACW05-2-85-531
Easement No. DACW05-2-93-549
Easement No. DACW05-2-05-563

Copies of the easements are located in Appendix B.

OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA DISPOSAL REPORT

6. Actions Affecting Title since Acquisition:

There are no actions affecting title to the United States since acquisition.

7. Cemeteries:

There is no public or private cemetery located on the property. There is also no cemetery owned in the vicinity which requires access or any government responsibility.

8. Jurisdiction Status:

Generally for the United States to receive jurisdiction over a subject piece of property the state of California must consent to the acquisition. Acquisition in this instance includes (1) land acquired in a fee by purchase or condemnation, (2) lands owned by the United States that are included in the military reservation by presidential proclamation or act of Congress, and (3) leaseholds acquired by the United States over private land or state-owned lands.

In granting this consent the Legislature and the State grant concurrent jurisdiction on and over the land to the United States, excepting and reserving state jurisdiction on and over land for the execution of civil and criminal process and to enforce the laws of the State of California in all cases, and the State's entire power of taxation including that of each state agency, county, city, and county, political subdivision or public district of or in the State. (California Government Code Section 126).

The procedure by which this State consent is granted normally consists of a request in writing submitted by the United States to the State of California. If such request meets with State approval consent is granted and the State then files the grant of consent with the Secretary of States office, as well as in the office of the county recorder of each county in which any point of land is situated.

There is no indication in the files that this formal procedure was complied with as to the Oakland Inner Harbor Tidal Canal; however, in 1943 sections 110, 113, 114, and 120 of the Government Code of California were enacted. The effect of the first three sections is to cede to the United States jurisdiction over all land held, occupied or reserved by it on 2 March 1897 and to tender jurisdiction over all land thereafter acquired, subject to acceptance by the government and certain reservations as indicated by California Government Code Section 126 (supra).

The Oakland Inner Harbor Canal was part of a national plan for greater Federal Control and utilization of the nation's navigable waters so called for by the River and Harbor Act adapted 23 June 1894.

The United States gained a fee interest through the Decree of Condemnation titled United States v M. Crooks, et al., entered 25 September 1882.

By applying the California Code Sections mentioned above (Sections 110, 113, and 114) to the date of condemnation proceeding (1882) the record indicates that jurisdiction was vested in the

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

United States on 2 March 1897, and the files on the Oakland Inner Harbor Tidal Canal indicate nothing to the contrary. This jurisdiction is concurrent with the State of California via the provisions of Section 126 California Government Code.

9. Public Domain Land:

There are no Public Domain lands in the project.

10. Bureau of Land Management (BLM) determination of minerals:

N/A

11. Mineral Interests:

N/A

12. Petroleum (oil & gas) or Royalty Reservations:

N/A

13. Flood Hazards/Wetlands Certification:

N/A

14. Historic or Artistic Value of Fixtures/Related Personal Property:

The property has no historic value under the criteria of the National Historic Preservation Act of 1966 or the Advisory Council on Historic Preservation Guidelines.

15. Historical, Architectural, Archeological or Cultural significance:

This property has no historical, architectural, archeological or cultural significance and is not eligible for listing on the National Register of Historic Places nor is it in the proximity to a property listed in the National Register.

16. Asbestos Containing Material (ACM):

N/A

17. Lead-Based Paint (LBP):

N/A

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

18. Hazardous Substance Activity:

Hazardous Substances Stored, Released, or Disposed of and Remediation Actions Taken:

The following table documents the hazardous substances known to have been stored or released on the property, and the remedial actions taken.

Property Description	ECP Condition Category	Remedial Actions
2235 & 2441 Clement Ave	4	Soils removal for metals impacts to soil. All activities are completed and the RWQCB has closed the site, per RWQCB Order R2-2014-0026 dated June 11, 2014.
2301 – 2337 Blanding Ave	2	Petroleum produce contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
2421 Blanding Ave	4	Metals contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
<p>The information contained in this table is required under the authority of regulation promulgated under section 120(h) of the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA or “Superfund”) 42 U.S.C. 9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substances CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 C.F.R. Part 373.</p>		

19. Other:

None

20. Screening:

Screening for further federal use of any of the land to be conveyed is not required. See attached HQ USACE Memo dated 5 Sept 2013; SUBJECT: Implementation Guidance for Oakland Inner Harbor Tidal Canal, California, Sections 3182(b) and (k) of WRDA 2007

21. Stewart B. McKinney Homeless Assistance Act:

Requirements do not apply to this action in accordance with HQ USACE Memo dated 5 Sept 2013; SUBJECT: Implementation Guidance for Oakland Inner Harbor Tidal Canal, California, Sections 3182(b) and (k) of WRDA 2007

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

22. Title 10 USC 2662 requirements:

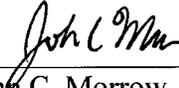
Requirements do not apply to this action in accordance with HQ USACE Memo dated 5 Sept 2013; SUBJECT: Implementation Guidance for Oakland Inner Harbor Tidal Canal, California, Sections 3182(b) and (k) of WRDA 2007

23. Location and Date of Document Review:

I certify that I have examined the records of the Department of the Army, Corps of Engineers, San Francisco District, pertaining to the Oakland Inner Harbor Tidal Canal, Oakland California.

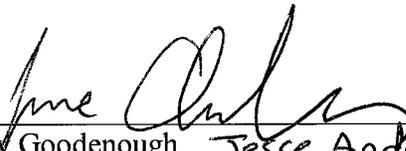
19 August 2016

Date



John C. Morrow
Lieutenant Colonel, US Army
District Engineer

Reviewed/Approved by:


For - Merry Goodenough Jesse Anderson
District Counsel Acting District Counsel

ENCLOSURES:

Appendix A – Map

Appendix B – Encumbrances

Appendix C - HQ USACE Memo dated 5 Sept 2013; SUBJECT: Implementation Guidance for Oakland Inner Harbor Tidal Canal, California, Sections 3182(b) and (k) of WRDA 2007

DETERMINATION Certification

The information furnished in the Disposal Report has been fully coordinated within required Installation, IMA and USACE offices (BRAC, if applicable, environmental, and legal and real estate) and is accurate and complete. I recommend that the Disposal Action proceed and that the Determination be executed

Date

Brenda Johnson-Turner
Director, Headquarters USACE

I have reviewed Section C, Environmental Considerations, including all attachments, and, if this is a disposal action to be performed by DA, the draft Findings of Suitability and environmental site assessments, and have determined that the environmental considerations are legally sufficient.

Date

HQ USACE Counsel

DETERMINATION

DETERMINATION APPROVING DISPOSAL

[Under Special Legislation or Continuing Authorities – not FPASA]

1. The attached Disposal Report and its findings have been reviewed.
2. The San Francisco District has determined that the disposal of this property will not adversely impact mission and/or operation of the project or installation.
3. No special use improvements are located on the property.
4. I have considered the disposal authorizations in Title 10 U.S.C. Section 2662 and have determined that the designated real property may be disposed under Special Legislation, Oakland Inner Harbor Tidal Canal, California, Sections 3182(b) and (k) of WRDA 2007. I approve the disposal of the designated property.

5. Coordination:

U.S. Army Corps of Engineers San Francisco District
HQ USACE
HQ DASA (IH&P)

6. The proposed disposal is approved subject to the restrictions stated in the Disposal Report [and supporting FOST/FOSET/ECOP] which must be placed in the disposal document and as added above and may be disposed of in accordance with applicable laws, rules and regulations.

Date

Brenda Johnson-Turner
Director, Headquarters USACE

DEED CHECKLIST for Oakland Inner Harbor Tidal Canal

1. PRELIMINARY QUESTIONS:

a. Has the appropriate Disposal Report (non-BRAC) or BRAC Disposal Support Package (BRAC) been prepared and approved?

Yes.

A copy is enclosed in the package as Enclosure A.

A copy is not enclosed, explain.

No, Explain.

b. Has the Determination either approving Disposal or declaring the property Excess to DA been signed by an appropriate official?

Yes, in accordance with Implementation Guidance dated 5 Sep 2013 (OIHTC IG), signed by Mr. Scott Whiteford, Chief of Real Estate, Directorate of Military Programs. A copy is enclosed in the package as Enclosure A.

No, a copy is enclosed for DASA(I&H) signature.

c. Has the property been screened with other DOD, military departments, and Federal agencies?

Yes, the property is being transferred within DOD or the USA - No Deed is required; do either a DD 1354 (w/i DOD) or a Secretarial Memo (other Federal Agency)

Yes, the property is being transferred to non-Federal entities.

No, Property is being conveyed under special or continuing authority that does not require screening

No, Explain: OIHTC IG

d. Has the Property been screened under the McKinney Homeless Assistance Act?

Yes, Date of notice to HUD _____

No, Explain: OIHTC IG

e. Are the enclosures referenced in the transmittal memorandum properly numbered and in the correct order? (Note: Do not remove and renumber enclosures or attachments to enclosures, i.e., do not pull an enclosure to the District Engineer's forwarding memo and attach it as a newly numbered enclosure to a higher HQ's memorandum).

Yes

No is not really an appropriate response, explain.

f. Are all exhibits referenced in the Deed attached to the Deed?

Yes

No, explain why not

2. HEADING

a. ATTORNEY CERTIFICATION:

Do Local recordation laws require an Attorney Certificaton?

Yes, use local format.

No, Attorney certification included per Army policy, showing name and location of attorney that prepared or reviewed the deed.

b. Will deed be a QUITCLAIM DEED or DEED WITHOUT WARRANTY [or other state name for a non-Warranty Deed]?

Yes

No, Warranty Deed is requested. Justification for Warranty Deed is attached.

3. STYLE

a. Does the style of the Deed follow the model deed template?

Yes

No, local formats and recordation requirements require deviation from Army model template [not already covered in the template instructions]. Briefly explain these local format and recordation requirements or attach state code sections that explain.

No, explain deviations and why.

4. PARTIES:

a. Who will sign the Deed for the UNITED STATES OF AMERICA (Grantor)?

Deputy Assistant Secretary of the Army (Installations & Housing)

Director of Real Estate,, pursuant to a delegation of authority

Other, explain.

b. Who will sign the Deed for the Grantee? Check the one that applies.

Grantee is an individual.

Legal name was verified, with AKA for other names, nicknames in quotes, or NEE as appropriate.

If the Individual is Trading as a Firm or Doing Business Under a Firm or Trade Name, the legal name of the individual was used, followed by the notation "doing business as _____".

Grantee is a corporation or association.

The GRANTEE is the officer(s) with official capacity to sign on its behalf, acting for the _____ Associaton/Corporation, duly organized and existing under and by virtue of the laws of the state of _____, with its principal office at _____.

- The signer has furnished extracts from the articles of incorporation, the by-laws, or the minutes of the board of directors, duly certified by the custodian of such records, under the corporate seal (if there is one), which properly vest the signer with authority to bind the corporation. In lieu of this evidence the signer may furnish a certificate signed by an appropriate corporate officer, other than the person executing the Deed.
- The corporation seal, if there is one, is affixed at the end.

Grantee is a Partnership.

- The GRANTEE(s) are all the partners, by name, or the name of the partnership by one partner who signs as one of the firm.
- The signer has furnished extracts from the Partnership agreement, which indicates the names of the general partners.
- In lieu of this evidence, the signer may furnish a Partnership Certificate, certifying that the signer has authority to bind the partnership

The GRANTEE is a State or local governmental entity.

- It provides the name of the entity and the name of the officer with official capacity signing on its behalf.
- The signer will furnish an extract from the minutes of the entity indicating that the Deed was approved by the governing body of the entity and authorizing a named individual to execute the Deed on its behalf.
- In lieu of the minutes, the signer may furnish a certificate signed by an appropriate official, other than the person executing the Deed – or a copy of a general delegation of authority showing this person has the capacity to sign.
- Deed can include a CERTIFICATE or the evidence of capacity to sign can be in the file.

Other, explain.

5. AUTHORITY. What is the authority for the Deed? The following are examples of common types and formats for each:

Excess - General FPASA conveyance under the DOD delegation of authority: “pursuant to the Federal Property and Administrative Services Act of 1949 (62 Stat.377) 40 U.S.C. §§101, et seq, as amended, and the delegation of authority to the Secretary of

Defense from the Administrator of the General Services Administration (41 C.F.R. 102-75.1055) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (20 Federal Register 7113)” [NOTE: this citation is not exactly the same as the one in the model deed. Which one do we use?]

[] BRAC

“ pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, approved June 30, 1949 (63 Stat. 377), 40 U.S.C. §§101, et seq, as amended, and the Defense Base Closure and Realignment Act of 1990, Public Law No. 101-510, as amended,”

[] Project Authority/Special Legislation, for example:

- pursuant to the powers and authority contained in the Act of Congress approved _____ (Public Law _____; Stat. _____)
- Cottage Sites: “pursuant to the powers and authority contained in the Act of Congress approved Aug. 6, 1956, (Public Law 84-999, ch. 987, Sec. 1; 70 Stat. 1065), 16 U.S.C. §460e.
- Port and industrial : “pursuant to the powers and authority contained in the Act of Congress approved July 14, 1960 (Public Law 86-645, title I, Sec. 108, 74 Stat. 486), 33 U.S.C. §578 Airport, 49 U.S.C. §47125 Highway- 23 U.S.C. 317 or 40 U.S.C. §1304
- Interstate highway system, 23 U.S.C. §107(d)
- Wildlife - 16 U.S.C. §§667 & 667b
- CW Exchange authority - 33 USC §§588b & b1
- Public Benefit, FPASA, 40 U.S.C. various sections

[X] other authority, explain and give citation for this authority. Authority is in accordance with Section 205 of WRDA 1990, Pub. L. No. 101-640 amended by Section 501(b) of WRDA 1996, Pub. L. No. 104-303 and Sections 3182(b) and (k) of WRDA 2007, Pub. L. No. 110-114..

6. –RECITALS

a. WHEREAS clauses have been kept to a minimum.

[X] Yes

[] No, explain what and why.

b. Enclosures or exhibits have not been referenced within a Whereas clause.

[] Yes

[X] No. Exhibit A is referenced as it describes the “Property.”

c. All conditions in WHEREAS clauses precede the transfer and are in past tense.

[] Yes

[X] No. The recordation date will be written in after recording.

d. Clauses include only information necessary to ensure clear land records.

Yes

No, explain why transmittal memo or a memorandum for the record can't be used instead.

e. Clauses have not been incorporated by reference into the body of the Deed?

Yes; No, explain

7. CONSIDERATION

What is the basis for the consideration cited? The transfer is without cost or consideration in accordance with the OIHTC IG.

8. OPERATIVE WORDS OF CONVEYANCE a. Is there a standard local format for the granting clause?

Yes, local format was used;

No, Model followed.

b. Do the words of conveyance match the type of Deed shown in the Heading? Yes

9. LEGAL DESCRIPTION

Does state law require legal description of the Property to be located within the body of the deed?

Yes

No, Legal description pending. Will include upon completion of surveyor.

10. ENCUMBRANCES.

a. Title and outstanding interests or claims. Was a title search done of the records by the District or by the Grantee?

Yes. Title search was done by the Grantee, City of Alameda on Nov 5, 2015

No, Explain: _____

b. Are there outstanding legal interests that should be listed?

Yes, see list.

No

c. General SUBJECT TO statement is included.

Yes;

No, explain why not.

11. RESERVATIONS

a. Are we reserving any access besides the standard CERCLA clause?

Yes. SUBJECT TO all valid and existing reservations, covenants, conditions, restrictions, and easements, including, but not limited to, rights-of-way for railroads, highways, pipelines, and public utilities, if any, whether of public record or not, and such rights-of-way or other rights as are determined to be necessary for the operation and maintenance of the authorized Federal Channel.

No, only standard.

b. Are we reserving any other property interest for the United States, such as a flowage easement or minerals at BLM's request?

Yes, explain

No

12. CONDITIONS

a. Did the Disposal Report or other document include requirement for any special Conditions (A condition affects title, and the Remedy for breach of it is a forfeiture of title)

Yes. [Write as appropriate. Explain in the cover memo the necessity or the peculiar situation. Explain the reasons for a Condition and legal effect of Condition. Explain why we need to convey full estate but retain reversionary interest: either possibility of reverter (title reverts upon event) or right of entry (action must be taken). DA policy is to only do special limitations (e.g. so long as used for airport purposes – where Grantee continues in possession or use while special situation persists) and right of entry so that it requires action to take back title – not automatic. Justify a condition that will result in immediate reverter upon happening of the event.]

No

13. CERCLA NOTICE AND COVENANT

Final FOST included a CERCLA covenant?

Yes.

No, clause included in the Deed did not come from the FOST. Explain, which clause was used -120(h) (3) or (4)?

14. Final FOST [or FOSET] has been executed and NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS [Right of Access, "As Is", Hold Harmless, Post-Transfer Discovery of Contamination, Environmental Protection Provisions] listed in the FOST [FOSET] have been inserted or attached to the Deed, verbatim, without deviation?

Yes

No. Environmental Protection Provision is not included as all federal remediation has been done and there are no further actions. As such, the land is being used as intended/zoned and there are no "protections," in place by any regulatory agencies, because all the actions are complete.

15. Did the Disposal Report or other document include requirement for any other special Covenants (A covenant is a promise or agreement, and violation gives rise to action for damages or injunctive relief.)

Yes [Write as appropriate. Explain in the cover memo the necessity or peculiar situation. Covenants can be personal or run with the land., express (stated) or implied (by law). A covenant runs with the land when either the liability to perform or the right to take advantage of it passes to the next grantee. A personal covenant is between the parties and should be in a Contract to Sell or Memorandum of Agreement. The Deed should only contain items that run with the land.]

No

16. AIRPORT

a. Is there an Airport in proximity to this property?

Yes, include explanation and provide copy of coordination with the Federal Aviation Administration.

No.

b. Is this airport property, being conveyed for an airport?

Yes, include statutory provisions and provide copy of coordination with the Federal Aviation Administration, if applicable.

No.

17. NON-DISCRIMINATION.

a. Is this conveyance for less than fair market value, a public benefit conveyance or some other type of federal financial assistance ?

Yes, include Non-Discrimination clause.

No, Non-Discrimination is not included because:

_____ it involve transfers for fair market value;

_____ the deed is related to a relocation contracts;

_____ it is a civil works deeds to a local sponsor, under a contract; or

_____ it is a deed to resolve encroachments.

18. AS IS CLAUSE.

Is the property being conveyed “AS IS”?

Yes, [modify language if necessary to follow that set out in the FOST/FOSET]

_____ No, deletion of the “As Is” clause is recommended. Explain.

19. HOLD HARMLESS/INDEMNIFICATION CLAUSE.

Is this a BRAC deed?

- Yes, hold harmless follows BRAC requirements [what are the BRAC Rqmts?]
 No. This conveyance is in accordance with OIHTD IG.

20. ANTI-DEFICIENCY ACT CLAUSE

Standard Anti-Deficiency Clause is included?

- Yes
 No, explain why not.

21. Is NO WAIVER CLAUSE included?

- Yes
 No, explain why not

22. Explain any special requirements of local law concerning. N/A

- execution of documents,
- witnesses,
- acknowledgments,
- authentication of acknowledgments

23. Is the deed accepted and signed by the Grantee?

- Yes
 No. The San Francisco District together with the Sacramento District real estate is seeking concurrence and approval of the disposal package from HQ's thru South Pacific Division prior to Grantee signing.

24. Describe any EXHIBITS.

- Exhibit A – Disposal Report
- Exhibit B – Quitclaim Deed
- Exhibit C – FOST dated August 2016
- Exhibit D – EBS dated August 2016

25. Are there any other disposal documents that are needed to complete the transaction, such as bills of sale, Memoranda to Sale, Offers to Sell, State Environmental restrictive easements?

- Yes, they are included in the package. List and explain.
 No.

**OAKLAND INNER HARBOR TIDAL CANAL, CALIFORNIA
DISPOSAL REPORT**

22. Title 10 USC 2662 requirements:

Requirements do not apply to this action in accordance with HQ USACE Memo dated 5 Sept 2013; SUBJECT: Implementation Guidance for Oakland Inner Harbor Tidal Canal, California, Sections 3182(b) and (k) of WRDA 2007

23. Location and Date of Document Review:

I certify that I have examined the records of the Department of the Army, Corps of Engineers, San Francisco District, pertaining to the Oakland Inner Harbor Tidal Canal, Oakland California.

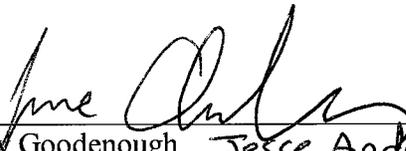
19 August 2016

Date



John C. Morrow
Lieutenant Colonel, US Army
District Engineer

Reviewed/Approved by:


For - Merry Goodenough Jesse Anderson
District Counsel Acting District Counsel

ENCLOSURES:

Appendix A – Map

Appendix B – Encumbrances

Appendix C - HQ USACE Memo dated 5 Sept 2013; SUBJECT: Implementation Guidance for Oakland Inner Harbor Tidal Canal, California, Sections 3182(b) and (k) of WRDA 2007

**U.S. ARMY CORPS OF ENGINEERS
OFFICIAL BUSINESS
REQUEST DOCUMENT BE RECORDED
AND EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE 6103**

**Recording requested by and
when recorded mail to:**

REAL ESTATE DIVISION
U.S. ARMY CORPS OF ENGINEERS
SACRAMENTO DISTRICT
1325 J STREET, 8TH FLOOR
SACRAMENTO, CA 95812-2922

Space above this line reserved for Recorder's use

This deed was reviewed by:



Merry Goodenough
District Counsel
U.S. Army Corps of Engineers
San Francisco District

**QUITCLAIM DEED
PARCELS 2 and 4 THROUGH 96
ALAMEDA SIDE OF THE OAKLAND INNER HARBOR TIDAL CANAL
ALAMEDA COUNTY, CALIFORNIA**

This QUITCLAIM DEED for Parcels 2 and 4 through 96 (hereinafter the "Deed") within the Oakland Inner Harbor Tidal Canal is made and entered into by and between the **UNITED STATES OF AMERICA** (hereinafter the "GRANTOR" or the "UNITED STATES"), acting by and through the Director of Real Estate, U. S. Army Corps of Engineers, under authority of the provisions contained in the Water Resources Development Act (WRDA) of 1990, Pub. L. No. 101-640 § 205, as amended by WRDA 1996, Pub. L. No. 104-303 § 501(b), WRDA 2007, Pub. L. No. 110-114 § 3182(b), and WRDA 2014, Pub. L. No. 113-121 § 6005(a) and the **CITY OF ALAMEDA**, a charter city and municipal corporation (hereinafter the "GRANTEE") (each a "Party" and collectively the "Parties").

WITNESSETH THAT:

WHEREAS, the GRANTOR does hereby REMISE, RELEASE, AND FOREVER QUITCLAIM unto the GRANTEE, its successors and assigns, all rights, title, and interest of the GRANTOR in and to that certain 42 acres of land, more or less, containing 94 parcels, situated, lying and being in the County of Alameda, State of California. The approximately 42-acre, 94-parcel property herein conveyed is identified as Parcels 2 and 4 through 96, particularly depicted by the subdivision maps attached as Exhibit A, which map has been duly recorded on the _____ day of _____, 2016 in the official records of the Alameda County Records Office and made a part hereof (the transferred parcels are referred to individually each as a “Parcel” and collectively referred to as the “Property”).

WITNESSETH THAT the GRANTOR does hereby RESERVE and RETAIN ALL RIGHT, TITLE, AND INTEREST IN Parcels 3 and 97 through 99 and the Unsurveyed Remainder Area 1 within the Oakland Inner Harbor Tidal Canal, which contains the Oakland side of the canal (Unsurveyed Remainder Area 1), property adjacent to the federally-owned Navy Operational Support Center (Parcel 3), and bridge footings for the High Street Bridge (Parcel 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Parcel 98) and the Park Street Bridge (Parcel 99), contained within the Oakland Inner Harbor Tidal Canal.

SUBJECT TO all valid and existing reservations, covenants, conditions, restrictions, and easements, including, but not limited to, rights-of-way for railroads, highways, pipelines, and public utilities, if any, whether of public record or not, and such rights-of-way or other rights as are determined to be necessary for the operation and maintenance of the authorized Federal Channel.

TO HAVE AND TO HOLD the Property granted herein to the GRANTEE, its successors and assigns, together with all and singular the appurtenances, rights, powers, and privileges thereunto belonging or in anywise appertaining, and all the estate, rights, title, interest, or claim whatsoever of the GRANTOR, either in law or in equity, and subject to the reservations, covenants, conditions, and restrictions set forth in the Deed.

AND IT IS FURTHER AGREED AND UNDERSTOOD by and between the Parties hereto that the GRANTEE, by its acceptance of the Deed and the GRANTOR, by its granting of the Deed, and as part of their collective consideration for the conveyance and acceptance made herein, covenants and each promises for itself, its successors and assigns, forever, that the Deed is made and accepted upon each of the reservations, covenants, conditions, and restrictions which shall be binding upon and enforceable against the GRANTEE, its successors and assigns, and the GRANTOR in perpetuity, as stated in the Deed, and as enforceable by the GRANTOR, the GRANTEE, or other interested parties, as applicable, and as may be allowed by law. The reservations, covenants, conditions, and restrictions set forth herein are a binding servitude on the Property and shall be deemed to run with the land. The failure to include the reservations, covenants, conditions, and restrictions in subsequent conveyances of the Property or portions thereof will not abrogate the status of these reservations, covenants, conditions, and restrictions as binding upon the GRANTOR and the GRANTEE, and the GRANTEE’S successors and assigns.

1. CERCLA NOTICE

For the Property, the GRANTOR provides the following notice, description, and covenants and retains the following access rights:

A. Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C §§ 9620(h)(3)(A)(i)(I) and (II)):

Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C §§ 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time which such substances were stored, released, or disposed of on the Property, as defined in section 120(h), is provided in Exhibit B, attached hereto and made a part hereof.

B. Description of Remedial Action Taken, if Any, Pursuant to Section 1230(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)):

Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit B, attached hereto and made a part hereof.

2. CERCLA COVENANT

A. Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(ii) and (B)):

Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(ii) and (B)), the United States warrants that:

(1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed, and

(2) any additional remedial action found to be necessary after the date of this Deed shall be conducted by the UNITED STATES.

This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, The Grantee shall not be considered a potentially responsible party solely due to the presence of a hazardous substance remaining on the property on the date of this instrument, provided that The Grantee has not caused or contributed to a release of such hazardous substance.

3. CERCLA RIGHT OF ACCESS

A. Access rights pursuant to section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C §9620(h)(3)(A)(iii)):

(1) The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of the UNITED STATES, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the UNITED STATES to meet its responsibilities under applicable laws, and as provided for in this instrument. Such easement and right of access shall be binding on the GRANTEE, its successors and assigns, and shall run with the land.

(2) In exercising such easement and right of access, the UNITED STATES shall provide the GRANTEE or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The UNITED STATES shall use reasonable means to avoid and to minimize interference with the GRANTEE'S and the GRANTEE'S successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the UNITED STATES. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the GRANTEE, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the UNITED STATES.

(3) In exercising such easement and right of access, neither the GRANTEE nor its successors and assigns, as the case may be, shall have any claim at law or equity against the UNITED STATES or any officer or employee of the UNITED STATES based on actions taken by the UNITED STATES or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause; provided, however, that nothing in this paragraph shall be considered a waiver by the GRANTEE or its successors and assigns of any remedy available under the Federal Tort Claims Act.

4. "AS IS" CONDITION

A. The GRANTEE acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the Property. The GRANTEE understands and agrees that the Property is conveyed in its "AS IS" condition without any representation, warranty, or guaranty by the GRANTOR as to quantity, quality, title, character, condition, size, or kind, or that the same is in a suitable condition or fit to be used for the purpose(s)

intended by the GRANTEE, and no claim for allowance or deduction upon such grounds shall be considered.

B. No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. The GRANTEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of the Property including, without limitation, the presence of any asbestos, lead-based paint, or other conditions on the Property. The failure of the GRANTEE to inspect or to exercise due diligence to be fully informed as to the condition of the Property shall not constitute grounds for any claim or demand against the UNITED STATES.

C. Nothing in this “AS IS” condition provision shall be construed to modify or negate the GRANTOR’S obligation under the covenant pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B)), or any other statutory obligations.

5. HOLD HARMLESS

A. To the extent authorized by law, the GRANTEE, its successors and assigns, covenant and agree to indemnify and hold harmless the GRANTOR, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the covenants, conditions, and restrictions in this Deed by the GRANTEE, its successors and assigns, as applicable, and (2) any and all claims, damages and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property related to a discharge or exposure taking place after the date of conveyance and during the GRANTEE’S, its successors’ and assigns’ ownership of such portion of the Property.

B. The GRANTEE, its successors and assigns, covenant and agree that the GRANTOR shall not be responsible for any costs associated with modification or termination of the covenants, conditions, and restrictions in this Deed including, without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property related to a discharge or exposure taking place after the date of conveyance and during the GRANTEE’S, its successors’ and assigns’ ownership of such portion of the Property.

C. Nothing in this Hold Harmless provision shall be construed to modify or negate the GRANTOR’S obligation under the covenant pursuant to sections 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B)), or any other statutory obligations.

6. POST-TRANSFER DISCOVERY OF CONTAMINATION

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property or any individual Parcel(s), after the date of conveyance, the GRANTEE, its successors or assigns, shall be responsible for such release or threatened release of such newly discovered substance, unless the GRANTEE, its successors or assigns is able to

demonstrate that such release or newly discovered hazardous substance or petroleum product was due to the GRANTOR'S activities, use, or ownership of the Property. If the GRANTEE, its successors or assigns, believes the discovered hazardous substance or petroleum product was due to the GRANTOR'S activities, use or ownership of the Property, the GRANTEE, its successors or assigns will immediately secure the site and notify the GRANTOR of the existence of the hazardous substance or petroleum product and the GRANTEE, its successors and assigns shall not further disturb or allow the disturbance of such hazardous substance or petroleum product without the prior written permission of the GRANTOR.

B. The GRANTEE, its successors and assigns, as part of the consideration for the conveyance of the Property or any individual Parcel(s), agree to release the GRANTOR from any liability or responsibility for any claims arising solely out of the release or threatened release of any hazardous substance or petroleum product on any portion of the Property related to a discharge or exposure occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property or any individual Parcel(s) by the GRANTEE, its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the GRANTOR'S responsibility to conduct response actions or corrective actions that are required by applicable laws, rules and regulations.

7. NON-DISCRIMINATION COVENANT

The GRANTEE, its successors and assigns, covenant that such GRANTEE, its successors and assigns, shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale or lease of any Parcel(s), or in its employment practices conducted on or in relation to the Parcel(s), as long as it holds such interest to the Parcel(s). For the avoidance of doubt, the foregoing covenant shall constitute, with respect to each and every Parcel, a "covenant that runs with the land" that applies to and that obligates the GRANTEE, its successors and assigns. The UNITED STATES shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Parcel(s) and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

8. ANTI-DEFICIENCY ACT

The GRANTOR'S obligation to pay or reimburse any money under the Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army and nothing in the Deed shall be interpreted to require obligations or payments by the GRANTOR in violation of the Anti- Deficiency Act, 31 U.S.C. § 1341.

9. NO WAIVER

The failure of the GRANTOR to insist in any one or more instances upon complete performance of any obligation of the GRANTEE, its successors or assigns required by the covenants, conditions, or restrictions set forth in the Deed shall not be construed as a waiver or a relinquishment of the GRANTOR'S right to the future performance of any such obligation of the GRANTEE, or its successors or assigns, required by said covenants, conditions, and restrictions,

and such obligations of the GRANTEE, its successors and assigns, shall continue in full force and effect.

-----NO CONDITIONS FOLLOW-----

DRAFT

ACCEPTANCE OF CONVEYANCE

IN WITNESS WHEREOF the GRANTEE, acting by and through its City Manager, hereby accepts the conveyance herein subject to the reservations, covenants, conditions and restrictions contained in the Deed, this _____ day of _____, 2016.

CITY OF ALAMEDA
a charter city and municipal corporation

By: _____

Jill Keimach
City Manager, City of Alameda

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On _____ before me, _____, (name of notary public) personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged to me that he/she/they executed the same in their authorized capacity(ies), and by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary)

CITY ATTORNEY'S CERTIFICATE

I, Janet Kern, acting as Legal Counsel for the City of Alameda, here referred to as the "GRANTEE," do hereby certify that I have examined the foregoing Deed and the preceding taken by the GRANTEE relating thereto and find that the acceptance of this Deed by the GRANTEE has been duly authorized and that the GRANTEE's execution hereof is in all respects due and proper and in accordance with the laws of the State of California, and further that, in my opinion, the Deed constitutes a legal and binding compliance obligation of the GRANTEE in accordance with the terms thereof.

Dated at _____ this _____ day of _____, 2016

By _____
Janet Kern, City Attorney

DRAFT

EXHIBIT A
Final Map of Parcels 2 through 4-96

DRAFT



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS
1455 MARKET ST.
SAN FRANCISCO, CALIFORNIA 94103-1398

CESPN-OC

25 August 2016

MEMORANDUM THRU U.S. Army Corps of Engineers, South Pacific Division Real Estate (CESPD-RE), 1455 Market Street, San Francisco, CA 94103-1399

FOR U.S. Army Corps of Engineers Director of Real Estate (CEMP-CR), 441 G Street N.W., Washington, DC 20314-1000

SUBJECT: Authority for Using Final Recorded Map to Convey Parcels in California for the Disposal of a Portion of the Oakland Inner Harbor Tidal Canal (OIHTC), Alameda, CA

1. The purpose of this memorandum is to identify the authority under California state law to utilize final recorded maps to convey property. Typically, to transfer property the United States Army Corps of Engineers (USACE) requires a legal description containing metes and bounds, coupled with a final map. In the instant transfer of the OIHTC, USACE has a tentative map which will be finalized at the time of the recording of the property transfer. See Enclosure 1, email from Andrico Penick, Assistant Attorney for the City of Alameda.
2. As noted in Mr. Penick's email, *McCullough v. Olds*, 108 Cal. 529 (1895), is the seminal California Supreme Court case articulating what constitutes an adequate property description sufficient to pass title. As long as the description of the premises in the deed is sufficiently definite and certain to enable the land to be identified, the deed will be sustained. *Id.* at 532. Moreover, "a deed, for a description of the land conveyed, may refer to another deed or to a map, and the deed or map to which reference is thus made is considered as incorporated in the deed itself." *Id.* at 531.
3. After reviewing Mr. Penick's email, *McCullough*, the citing references, Miller and Starr's California Real Estate Treatise, the sample quitclaim deed from the City of Cupertino, California, Enclosures 1-5, I firmly believe that there is adequate authority to use a final recorded map to convey parcels for the disposal of a portion of the OIHTC. As such, I concur with Mr. Penick's legal opinion and believe that any business risks associated with this property transfer are *de minimis*.
4. In accordance with sections 3182(b) and (k) of the Water Resources Development Act of 2007, I recommend that USACE divest itself of ownership of a portion of the OIHTC, as described in the current tentative map which will be finalized when recorded, without change.

CESPN-OC

SUBJECT: Authority for Using Final Recorded Map to Convey Parcels in California for the Disposal of a portion of the Oakland Inner Harbor Tidal Canal (OIHTC), Alameda, CA

5. For any further questions or comments, please contact the undersigned at (415) 503-6760 or at merry.goodenough@usace.army.mil.



MERRY GOODENOUGH
District Counsel

5 Encls

1. Penick email
2. *McCullough* case
3. Citing References
4. Miller and Starr Treatise
5. Sample Quitclaim

From: [Andrico Penick](#)
To: [Angel, Tom HQ](#); [Jillian Blanchard](#); [Goodenough, Merry SPN](#)
Cc: [Dowdy, Sandra L SPN](#); [Anderson, Jesse L SPN](#); [Merchant, Randall C HQ @ SPD](#); [Paniccia, Alfred \(AI\) SPN](#)
Subject: [EXTERNAL] Tidal Canal - Authority for using Final Recorded Map to convey parcels
Date: Wednesday, August 24, 2016 6:53:24 PM
Attachments: [McCullough v Olds.pdf](#)
[Westlaw - List of 52 Citing References for McCullough v Olds.pdf](#)
[Miller Starr - Description by reference to a map or survey.pdf](#)
[Grant Deed - 1.21.1983.pdf](#)
Importance: High

Hi Tom.

The key case that answers your question is a 1895 California Supreme Court case: *McCullough v. Olds* (1895) 108 Cal. 529, 532 <Blockedhttp://scholar.google.com/scholar_case?about=2354664713178724976&q=%22108+cal+529%22&hl=en&as_sdt=4,5> . (Linked and attached for your ease of reference.) In *McCullough*, the trial court was dealing with a quiet title action involving two lots in San Diego, California. At trial, Appellee introduced evidence that the lots in question were conveyed via deeds that made reference to maps that were recorded in the office of the County Recorder. Appellant objected to the maps on several grounds. The trial court sustained the evidentiary objections and ruled in favor of Appellant. A new trial was granted apparently on the theory that the trial court erred in excluding the deeds and an appeal was taken. The issue on appeal was “did the deeds contain a description of the premises in controversy sufficient to pass the title. . .? *McCullough* at 531.

In reaching its opinion that a map referenced in a deed is sufficient to convey property, the California Supreme Court stated the following:

“It is a general and well-settled rule of law that ‘a deed, for a description of the land conveyed, may refer to another deed or to a map, and the deed or map to which reference is thus made is considered as incorporated in *532 the deed itself.’ *Devl. Deeds*, § 1020, and cases cited.” *McCullough* at 531 – 532 (underline added).

“So, also, it is a familiar rule that when a tract of land has been subdivided into blocks or lots, and a map thereof made on which the blocks or lot are designated by numbers, a description of the blocks or lots in a deed by the numbers so designated is sufficient, provided the map can be produced and identified.” *Id.* at 532.

But ‘if a surveyor, by applying the rules of surveying, can locate the land, the description is sufficient. And generally the rule may be stated to be that the deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed.’ *Id.* (internal citations omitted).

The California Supreme Court in *McCullough* went on to find that: “The deed in question described the lots by numbers, and as containing 10 acres each in Reiner's subdivision of lot 1,103, said subdivision being recorded in Book 1, page 184, records of San Diego county. There was record evidence that Reiner owned lot 7 in Mission valley, and it was agreed that that lot was the same as lot 1,103. It seems clear, therefore, that Reimer in making his deed to Courts had in mind and referred to the lot which he owned and *533 had had subdivided and platted. Under

these circumstances we do not think it can be said, as matter of law, that the description was so defective as to be void for uncertainty.” Id. At 532 – 533.

The Court in reference to its opinion in *Caldwell v. Center* (1866) 30 Cal 539, 540 wherein the Court conceded that a map in lieu of a metes and bounds legal description was acceptable stated “This court, after conceding that the parties to a deed, instead of setting out in full the metes and bounds or other complete designation of the tract intended to be conveyed, may describe it in whole or in part by reference to some instrument, as a deed, map, etc., which contains or furnishes such a description of the land that it when read in connection with the deed will completely identify the land, . . .” .McCullough at 533.

McCullough has been cited 52 times in primary and secondary sources as late as 2016. (See attached Cite history.) It’s only negative treatment was in *Gardner v. County of Sonoma* which was distinguished on other grounds. McCullough makes it quite clear that in California a deed that makes reference to a map is sufficient to transfer property under common law and case law so long as the description is sufficient. Now, not only do we have case law, we also have the benefit of the Subdivision Map Act (California Government Code Section 66410 et seq.) which codifies in great detail the steps necessary to create a legally sufficient parcel map, final map and vesting tentative map.

In this proposed transaction we are preparing a Final Map. At this stage in the process it is referred to as a Tentative Map. It was prepared by a licensed California surveying company. If this transaction moves forward, it will be approved by the Alameda City Council at a duly noticed public meeting. It will then be reviewed and signed by the City Engineer and stamped by the surveyor. It will then be sent to the Title Company who will review it and then file it with the Alameda County Recorder just prior to the transfer. The quitclaim deed from the Army Corps to the City will have the recorded Final Map attached to it and the deed will make reference to the attached map and refer to the parcels by their number as designated on the map. The Final Map will be easily identified as it will not only be referenced in the deed, it will be physically attached. All of this will be done in accordance with the Subdivision Map Act. At some point after the transaction, the County Assessor will assign Assessor Parcel Number or (APNs) to each parcel. This is for taxing purposes only. APNs are not meant to denote ownership though they are commonly used to identify parcels.

Although it is not binding precedent, the law firm of Miller Starr is considered the premier experts on California real estate law. (They literally wrote the book.) They have a treatise that has been published for many years and is highly regarded as a secondary source. The pertinent section is attached and highlighted for your reference.

Lastly, I have attached a grant deed that transferred property by reference to a parcel map. This one happens to have been recorded in 1983 in Santa Clara County which is about 50 miles south of Alameda (which is located in Alameda County). The Subdivision Map Act is a state law so all California counties are subject to the Act. It is not proof but it is evidence that property does transfer in this fashion in California and such a deed would be accepted by the county clerk.

I hope that this answers your question as to this issue. Since a legal description by metes and bounds is not legally required and since obtaining such would add unnecessary costs, the City will not be preparing a metes and bounds legal description. As for your other question about the jurisdictional property line, my surveyor spoke to the Army Corps surveyor but as I understand it they did not get to the jurisdictional issue in their initial discussion. I have asked my surveyor to reach out to the Army Corps’ survey so that they can have that discussion. I am sure that after

they talk, it will be evident that the City has not strayed over the jurisdictional line. AQP

Andrico Q. Penick

Assistant City Attorney

(510) 747-4763 (direct)

APenick@AlamedaCityAttorney.org <<mailto:APenick@AlamedaCityAttorney.org>>

 KeyCite Yellow Flag - Negative Treatment
Distinguished by [Gardner v. County of Sonoma](#), Cal.,
February 6, 2003

108 Cal. 529
Supreme Court of California.

McCULLOUGH et al.

v.

OLDS et al.

No. 19,413.

|
Aug. 21, 1895.

Commissioners' decision. Department 1. Appeal from superior court, San Diego county; John R. Aitken, Judge.

Action by D. S. **McCullough** and others against L. E. **Olds** and others to quiet title to land. Judgment was rendered in favor of defendant **Olds**, and from an order granting a new trial he appeals. Affirmed.

West Headnotes (10)

[1] **Deeds**

 [Certainty in General](#)

A deed of two lots did not mention the state, county, or city in which they were located, but described them as lots 3 and 4, and as containing 10 acres each, in R.'s (the grantor's) subdivision of lot 1,103, said subdivision being recorded in a certain book and page in the records of S. county. In the book mentioned, at the page stated, was a map indorsed, "Plan of Lots in M. Valley Belonging to R. The foregoing survey of lots is a subdivision of 160 acres situated in M. Valley, and being 1,103 on the official map of S." Lots 3 and 4 on the map were shown to be 10 acres each. Held, that the description in the deed was sufficient.

[8 Cases that cite this headnote](#)

[2] **Deeds**

 [Certainty in General](#)

If a surveyor, by applying the rules of surveying, can locate the land, the description in the deed is sufficient.

[1 Cases that cite this headnote](#)

[3] **Deeds**

 [Certainty in General](#)

The description of premises in a deed must be sufficiently definite and certain to enable the land to be identified or the deed will be void for uncertainty.

[Cases that cite this headnote](#)

[4] **Deeds**

 [Certainty in General](#)

The general rule is that deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed.

[Cases that cite this headnote](#)

[5] **Deeds**

 [Reference to Maps or Plats](#)

When the map is referred to in deed as recorded in office of county recorder, it may be identified by extrinsic evidence, and the fact that it is not recorded or of record within the ordinary meaning of the term is immaterial.

[1 Cases that cite this headnote](#)

[6] **Deeds**

 [Reference to Maps or Plats](#)

Where tract has been subdivided into blocks or lots and a map thereof made on which the blocks or lots are designated by numbers, a description of the blocks or lots in the deed by the

numbers so designated is sufficient if the map can be produced and identified.

[2 Cases that cite this headnote](#)

them as recorded or of record in that office.

[Cases that cite this headnote](#)

[7] **Deeds**

[🔑 Reference to Other Instruments or Records](#)

Deeds

[🔑 Reference to Other Instruments or Records in General](#)

A description in a deed of the land conveyed may refer to another deed or map and the deed or map to which reference is thus made is considered as incorporated in the deed itself.

[3 Cases that cite this headnote](#)

[8] **Deeds**

[🔑 Execution, Existence, and Identity](#)

Where a deed describes the land according to a map “recorded” in Book 1, page 184, of the county records, proof of a map “pasted” on the page mentioned sufficiently identifies the map referred to.

[Cases that cite this headnote](#)

[9] **Deeds**

[🔑 Execution, Existence, and Identity](#)

The mere fact that at the corner of a map was written a statement that one lot was “surveyed for J.” at a date later than that at which the map was received for record, and signed by “P., County Surveyor,” does not show that the entire map was a survey by P.

[Cases that cite this headnote](#)

[10] **Evidence**

[🔑 Particular Facts](#)

It is common knowledge that it has been customary to deposit maps in the office of the county recorder and to refer to

Attorneys and Law Firms

****420 *529** Works & Works, for appellant.

Hunsaker & Britt and W. J. Hunsaker, for respondents.

Opinion

BELCHER, C.

This is an action to quiet the plaintiffs' title to two lots of land in the city of San Diego, described in the complaint as ‘Lots three and four, containing each ten acres of land, being a portion of pueblo lot 1,103, according to the official map of the pueblo ***530** lands of the city of San Diego made by Charles H. Poole, and also described as lots three and four, geing in the ten-acre lot range of lot 1,103, according to the subdivision thereof, a plat of which is recorded in the office of the county recorder of San Diego county, in Book number one of Deeds, at page 184.’ All of the defendants except the appellant disclaimed any interest in the said lots. The appellant answered, denying the plaintiffs' ownership ‘of the real estate described in plaintiffs' complaint, or any part thereof,’ and admitting that she claimed an interest ‘in the said real property adverse to the plaintiffs.’ The case was tried, and the findings and judgment were in favor of appellant. The plaintiff moved for a new trial, and the motion was heard by the successor of the judge who tried the case, and granted. From that order this appeal is prosecuted.

At the trial, plaintiffs introduced in evidence a patent from the United States, which bore date April 10, 1874, and conveyed to the president and trustees of the city of San Diego certain lands which formerly constituted the Mexican pueblo of San Diego, and included the land in controversy. Plaintiffs next introduced in evidence a deed from the trustees of the city of San Diego to Joseph Reiner, which bore date July 25, 1853,

and conveyed to the grantee that certain property lying and being situated within the limits of the city of San Diego, and known and described as lot 7 in the Mission valley, containing 160 acres, as indicated upon the map of the city made by Clayton & Hesse, civil engineers, in 1851. And thereupon it was admitted by appellant that lot No. 7 in Mission valley, containing 160 acres, according to the map made by Clayton & Hesse in 1851, was identical with pueblo lot numbered 1,103, according to the official map of the pueblo lands of San Diego made by Charles H. Poole. Plaintiffs next produced from the county recorder's office Book 1 of Deeds, and offered in evidence the map and entries found on page 184 thereof. The map was pasted on the page, and the entries or indorsements were as follows: 'Original delivered to James Reiner February 4, 1858. Plan of lots in Mission valley belonging to James Reiner, Esq. County surveyor's office, San Diego, January 12, 1856. Wm. H. Leighton, deputy county surveyor. The foregoing subdivision or survey of lots is a subdivision of one hundred and sixty acres situated in Mission valley, and being numbered one thousand one hundred and three on the official map of San Diego. Joseph Reiner. Received for record January 28, 1858, at 10 o'clock a. m., and recorded February 4, 1858, at 4 o'clock p. m., at request of Joseph Reiner. Geo. A. Pendleton, Recorder.' Across the map were lines dividing it into blocks or lots, four of which, extending through the center from left to right, were marked as 660 feet square, and numbered: '1, 10 acres,' '2,' '3,' and '4.' At the upper left-hand corner was a lot, marked 'A, 10 acres,' on which was written: 'Surveyed for Joshua Sloane, June 15, 1868. James Pascoe, County Surveyor.' Plaintiff next offered in evidence a deed from Joseph Reiner to Cave J. Coutts, dated February 10, 1858, and recorded April 15, 1858. By this deed the grantor remised, released, and quitclaimed to the grantee 'lots *531 number three (3) and four (4), containing ten acres each, in Reiner's **421 subdivision of lot 1,103, * * * said subdivision recorded in book one (1), page 184, records of San Diego county.' Plaintiff also offered other deeds from Coutts and his grantee, through and under which they claimed title to the lots in question.

Appellant objected to the Reiner deed and the other subsequent deeds upon the grounds: (1) 'That the

deed from Reiner to Coutts does not sufficiently describe the property or any property, and that it does not state the state, county, or city in which the property is situated.' (2) 'That the map offered in connection with the deeds does not appear to be the map referred to in the deeds.' (3) 'That the deeds refer to a map recorded in Book 1 of the Records of San Diego, page 184, while the map offered in evidence is not recorded, but simply pasted in the book, and that no map is recorded in the book offered at page 184, or elsewhere.' (4) 'That the deed and map, taken together, do not sufficiently describe the property, or any property, and that they do not show the county, state, or city.' (5) 'That said map does not purport to be map of 1,103, but a map of a survey made for Joshua Sloane June 15, 1858.' The court sustained the objection and refused to admit the said deeds in evidence, and thereupon, the case being submitted without further evidence, rendered its decision and judgment in favor of appellant. The new trial was evidently granted upon the theory that the trial court erred in excluding the offered deeds; and the only question presented here for consideration is, did the Reiner deed contain a description of the premises in controversy sufficient to pass the title thereto to Coutts, or was it void for uncertainty?

It is a general and well-settled rule of law that 'a deed, for a description of the land conveyed, may refer to another deed or to a map, and the deed or map to which reference is thus made is considered as incorporated in *532 the deed itself.' Devl. Deeds, § 1020, and cases cited. So, also, it is a familiar rule that when a tract of land has been subdivided into blocks or lots, and a map thereof made on which the blocks or lot are designated by numbers, a description of the blocks or lots in a deed by the numbers so designated is sufficient, provided the map can be produced and identified. Of course the description of the premises in the deed must be sufficiently definite and certain to enable the land to be identified, or it will be void for uncertainty. But 'if a surveyor, by applying the rules of surveying, can locate the land, the description is sufficient. And generally the rule may be stated to be that the deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed.' Devl. Deeds, § 1012. And see 5 Lawson, Rights, Rem. & Prac. § 2285,

where it is said, citing numerous authorities, that 'if, notwithstanding an uncertain description, the intention of the parties can be gathered from the deed, or from oral proof, the grant is not void.'

The objection that the description in the deed to Courts was void for uncertainty, because it did not state the state, county, or city in which the property is situated, is not tenable. Such a statement was not necessary, if without it the property could still be located and identified. [Beal v. Blair](#), 33 Iowa, 318; [Kykendall v. Clinton](#), 3 Kan. 85; [Atwater v. Schenck](#), 9 Wis. 160; [Kile v. Yellowhead](#), 80 Ill. 208; [Smith v. Crawford](#), 81 Ill. 296; [Devine v. Burleson](#), 35 Neb. 238, 52 N. W. 1112. The deed in question described the lots by numbers, and as containing 10 acres each in Reiner's subdivision of lot 1,103, said subdivision being recorded in Book 1, page 184, records of San Diego county. There was record evidence that Reiner owned lot 7 in Mission valley, and it was agreed that that lot was the same as lot 1,103. It seems clear, therefore, that Reimer in making his deed to Courts had in mind and referred to the lot which he owned and *533 had had subdivided and platted. Under these circumstances we do not think it can be said, as matter of law, that the description was so defective as to be void for uncertainty.

The objection that the map offered in connection with the deeds does not appear to be the one referred to in the deeds, but the map of a survey made for Joshua Sloane in June, 1868, is based on the indorsement found on the upper left-hand corner of the map. But that indorsement cannot have the effect claimed for it. At most it would seem to indicate only that in June, 1868, Pascoe, as county surveyor, made a survey for Sloane of the 10-acre lot 'A,' and then made the indorsement as a certificate of such survey.

The objection that the map, having been only pasted in the deed book and not recorded, could not be used to help out the description in the deed, is rested upon the authority of [Caldwell v. Center](#), 30 Cal. 540, and [Cadwalder v. Nash](#), 73 Cal. 43, 14 Pac. 385. In the case first cited the plaintiff produced a map from the recorder's office, and the defendants objected to it on the ground that 'it was made with pencil and not with ink,'

and that 'it is pasted in between the leaves of the book, but not recorded.' This court, after conceding that the parties to a deed, instead of setting out in full the metes and bounds or other complete designation of the tract intended to be conveyed, may describe it in whole or in part by reference to some instrument, as a deed, map, etc., which contains or furnishes such a description of the land that it when read in connection with the deed will completely identify the land, said: 'The objection should have been sustained. Had the deed referred to a map to be found in that place and condition, it would have been admissible in evidence, for it would have constituted in effect a part of the deed as much as if it had been copied into it. But the deed **422 calls for a map duly recorded in the recorder's office, and by the utmost stretch of liberality the one produced cannot be regarded *534 as recorded. The act concerning county recorders provides that the several instruments entitled to record shall be recorded 'in large and strong bound books, and in a fair, large and legible hand.' The necessary implication from this provision is that the instrument must be copied into the proper book of record; and in view of the purpose to be subserved by the recording of the several classes of instruments mentioned in the act—the making and preservation of accurate and durable official copies of such instruments—a copy made in pencil or other material that would not permanently remain would not be within the spirit of the act. The map should for these reasons have been excluded.' In the second case cited the deed was held void for uncertainty, because it appeared that the reference to the map therein was equally applicable to two different maps, and it was decided that, in such case, parol evidence was inadmissible to identify the one referred to. Without commenting on the cases cited, it is enough to say that there was no statute in 1858, and is none now, so far as we are advised, providing for the recording of maps. It is, however, a matter of common knowledge that it has been customary to deposit maps in the office of the county recorder, and to refer to them as 'recorded,' or 'of record,' in that office. And, when such a map is thus referred to, it may be identified by extrinsic evidence, and the fact that it is not recorded or of record, within the ordinary meaning of those words, is wholly immaterial. In the case of

[Saunders v. Schmaelzle](#), 49 Cal. 59, the deed, for a description of the property to be conveyed, referred to another deed 'recorded in Sacramento'; and it was held that the description in the deed given was not vitiated by the fact that the deed referred to was falsely stated to be recorded in the county where the property was situated. And in [Water Co. v. Swartz](#), 99 Cal. 278, 33 Pac. 878, a sheriff's deed described the property conveyed as the north half of block 36, Colton addition, a plat or map of which addition 'is of record in the office of the county recorder of San Bernardino *535 county, state of California.' The map offered in evidence was found in a book of maps kept in the recorder's office, and it was objected that it was not admissible, as it was not acknowledged so as to entitle it to record. It was held that 'a map thus deposited within the recorder's office is properly referred to in an instrument of conveyance as being 'of record' therein, and may be received in evidence, even though it be not

acknowledged.' The map offered in evidence in this case was not objected to; but, if it had been, we think it admissible, notwithstanding the deed referred to its as 'recorded in Book one, page 184, records of San Diego county.'

The other points discussed by counsel do not require special notice. The order appealed from should be affirmed.

We concur: VANCLIEF, C.; HAYNES, C.

PER CURIAM.

For the reasons given in the foregoing opinion, the order appealed from is affirmed.

All Citations

108 Cal. 529, 41 P. 420

Citing References (52)

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	1. Answer of County of Santa Barbara to Amicus Curiae Brief of Weyrich Development Company ¶ CIRCLE K RANCH CORP., Plaintiff and Appellant, v. BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA, Defendant and Respondent. 1999 WL 34767962, *34767962+, Cal.App. 2 Dist. (Appellate Brief)	Aug. 09, 1999	Brief		—
Discussed by	2. OPENING BRIEF ON THE MERITS Gardner v. County of Sonoma 2002 WL 1000131, *9+, Cal. (Appellate Brief)	Feb. 15, 2002	Brief		—
Discussed by	3. Appellant's Opening Brief AEERNATHY VALLEY, INC., and Raymond Ferrari, Plaintiffs and Respondents, v. COUNTY OF SOLANO, Defendant and Appellant. 2008 WL 5260802, *5260802+, Cal.App. 1 Dist. (Appellate Brief)	Aug. 22, 2008	Brief		—
Discussed by	4. Respondent's Brief ¶ Jack A. GARDNER, Jocelyn Gardner, Trustees of the Gardner Family Trust, Lindsay L. Gardner and Hilary A. Gardner, Plaintiffs/Appellants, v. COUNTY OF ... 2001 WL 35834197, *35834197+, Cal.App. 1 Dist. (Appellate Brief)	May 16, 2001	Brief		—
Discussed by	5. Amici Curiae Brief of California Cities and California State Association of Counties in Support of Respondent Board of Supervisors of Santa Barbara Co... CIRCLE K RANCH CORP., Plaintiff and Appellant, v. BOARD OF SUPERVISORS OF SANTA BARBARA COUNTY, Defendants and Respondents. 1999 WL 34767975, *34767975+, Cal.App. 2 Dist. (Appellate Brief)	June 02, 1999	Brief		—
Distinguished by NEGATIVE	6. Gardner v. County of Sonoma ¶ 129 Cal.Rptr.2d 869, 877, Cal. REAL PROPERTY - Zoning and Planning. Antiquated maps did not create legal subdivision parcels.	Feb. 06, 2003	Case		—
Distinguished by NEGATIVE	7. Gardner v. County of Sonoma 112 Cal.Rptr.2d 386, 396, Cal.App. 1 Dist. REAL PROPERTY - Zoning and Planning. Recordation of antiquated subdivision map in 19th century did not create legal parcels for subdivision.	Oct. 11, 2001	Case		—
Cited by	8. Fox v. Wright 91 P. 1005, 1007, Cal. In Bank. Appeal from Superior Court, Los Angeles County; N. P. Conrey, Judge. Action by Edwin R. Fox against W. S. Wright and others. From a judgment for defendants, plaintiff...	May 13, 1907	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	9. Borchard v. Eastwood 65 P. 1047, 1048 , Cal. Commissioners' decision. Department 1. Appeal from superior court, Orange county; J. W. Ballard, Judge. Action by Carl A. Borchard against John Eastwood. From a judgment for...	July 24, 1901	Case		—
Cited by	10. Higgins v. Higgins 53 P. 1081, 1082 , Cal. Commissioners' decision. Department 2. Appeal from superior court, San Diego county. J. W. Hughes, Judge. Action by Emily J. Higgins against H. M. Higgins and others to enforce...	July 21, 1898	Case		—
Cited by	11. Rea v. Haffenden 48 P. 716, 718 , Cal. Commissioners' decision. Department 2. Appeal from superior court, San Diego county; E. S. Torrance, Judge. Action by John B. Rea against Albert Haffenden and others to foreclose...	Apr. 27, 1897	Case		—
Cited by	 12. Alfaro v. Community Housing Imp. System & Planning Ass'n, Inc. 124 Cal.Rptr.3d 271, 290 , Cal.App. 6 Dist. REAL PROPERTY - Covenants and Restrictions. Deed restriction limiting the resale prices of homes in inclusionary housing development was not an unreasonable restraint on...	Feb. 19, 2009	Case		—
Cited by	13. Flores v. Flores ¶ 204 P. 54, 56 , Cal.App. 2 Dist. Appeal from Superior Court, Imperial County; Phil D. Swing, Judge. Suit by Jose Maria Flores against Juana E. de Flores. From judgment for defendant, plaintiff appeals. Reversed.	Dec. 12, 1921	Case		—
Cited by	14. Mitchell v. Whitford 192 P. 457, 458 , Cal.App. 3 Dist. Appeal from Superior Court, Stanislaus County; L. W. Fulkerth, Judge. Action by R. C. Mitchell, as trustee, against R. A. Whitford and others for the foreclosure of a mortgage....	Aug. 10, 1920	Case		—
Cited by	15. Crozer v. White 100 P. 130, 132 , Cal.App. 3 Dist. Appeal from Superior Court, Mendocino County; J.Q. White, Judge. Action by Georgie E. Crozer against W.P. White and another. From a judgment for defendants, and from an order...	Dec. 31, 1908	Case		—
Cited by	 16. Irvine v. McDougal 1915 WL 294, *2 , D.Alaska Terr. Plaintiff in this action seeks to foreclose certain liens for labor alleged to have been performed in the development and improvement of the Pioneer quartz mining claim. Plaintiff...	Mar. 03, 1915	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	17. Irvine v. McDougall ¶¶ 1913 WL 412, *3 , D.Alaska Terr. This is an action by the plaintiff to foreclose various liens for labor alleged to have been performed in the development and improvement of the "Pioneer quartz mining claim,...	Oct. 11, 1913	Case		—
Cited by	18. Bucher v. Overlees 89 S.W. 1021, 1023 , Indian Terr. Appeals from the United States Court for the Northern District of the Indian Territory; before Justice Joseph A. Gill, February 3, 1904. Action by F. M. Overlees against Frank...	Oct. 27, 1905	Case		—
Cited by	19. Burns v. Witter 108 P. 129, 130 , Or. Appeal from Circuit Court, Multnomah County; John B. Cleland, Judge. Suit by James Burns against C.G. Witter and wife. From a judgment sustaining a demurrer and dismissing the...	Apr. 19, 1910	Case		—
Cited by	20. Harper v. Pauley 81 S.E.2d 728, 733 , W.Va. Suit for specific performance of written option relating to sale of realty. The Circuit Court of Kanawha County overruled demurrers to bill of complaint, and sustained demurrer to...	Dec. 01, 1953	Case		—
Cited by	21. Crotty v. Effler 54 S.E. 345, 346 , W.Va. Appeal from Circuit Court, McDowell County. Bill by Julia Crotty against Barbara Effler and others. Decree for plaintiff, and defendants appeal. Affirmed.	June 12, 1906	Case		—
Cited by	22. Holley's Ex'r v. Curry 51 S.E. 135, 137 , W.Va. Appeal from Circuit Court, Lincoln County. Bill by E. W. Holley's executor against B. F. Curry and others. Decree for defendants, and plaintiff appeals. Reversed.	May 27, 1905	Case		—
Cited by	23. Answer to Petition for Review Jack A. GARDNER, Jocelyn Gardner, Trustees of the Gardner Family Trust, Lindsay L. Gardner and Hilary A. Gardner, Petitioners, v. COUNTY OF SONOMA, et... 2001 WL 34690596, *34690596+ , Cal. (Appellate Petition, Motion and Filing)	Dec. 10, 2001	Petition		—
Cited by	24. Respondent's Brief CITY OF CLOVERDALE, Defendant and Appellant, v. STATE OF CALIFORNIA, Department of Transportation, Defendant and Respondent. Underlying Action: ALL CO... 2007 WL 4914719, *4914719+ , Cal.App. 1 Dist. (Appellate Brief)	Dec. 12, 2007	Brief		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	25. Respondent's Brief WITT HOME RANCH, INC., Plaintiff/Petitioner/ Appellant, v. SONOMA COUNTY, Defendant/ Respondent. 2007 WL 4914787, *4914787+ , Cal.App. 1 Dist. (Appellate Brief)	Dec. 12, 2007	Brief		—
Cited by	26. Appellants' Opening Brief Jack A. GARDNER, et al, Gardner, Trustees of the Gardner Family Trust, Lindsay L. Gardner and Hilary A. Gardner Plaintiff/Appellant, v. COUNTY OF SONO... 2001 WL 35834199, *35834199+ , Cal.App. 1 Dist. (Appellate Brief)	Feb. 22, 2001	Brief		—
Cited by	27. Respondent's Brief Kathleen A. KENNE, an individual, Plaintiff and Appellant, v. Kevin P.STENNIS, individual, Defendant and Respondent. 2014 WL 9965897, *1+ , Cal.App. 2 Dist. (Appellate Brief)	Dec. 18, 2014	Brief		—
Cited by	28. Appellant's Opening Brief Betty FITE-ROBINSON, Appellant, v. CONSERVATORSHIP OF THE PERSON AND ESTATE OF JENNIE FITE, Respondent. 1999 WL 34849998, *34849998+ , Cal.App. 2 Dist. (Appellate Brief)	Aug. 24, 1999	Brief		—
Cited by	29. Appellant's Opening Brief CIRCLE K RANCH CORP, Plaintiff/Appellant, v. BOARD OF SUPERVISORS OF SANTA BARBARA COUNTY, Defendants/Respondents. 1999 WL 34767974, *34767974+ , Cal.App. 2 Dist. (Appellate Brief)	Mar. 24, 1999	Brief		—
Cited by	30. Respondent's Brief BANK OF AMERICA, N.A., Plaintiff and Respondent, v. UNIT 73 MEADOW LANE PARTNERSHIP, 66 Meadow Lane Partnership, Unit 73 MLMM Partnership, Defendants ... 2013 WL 5606947, *1+ , Cal.App. 3 Dist. (Appellate Brief)	Aug. 23, 2013	Brief		—
Cited by	31. Appellant's Opening Brief Alan W. CLAUDINO, Plaintiff/Respondent, v. Patricia Ann PEREIRA, as Trustee of the Patricia Pereira Family Trust, Defendant/Appellant. 2008 WL 783906, *783906+ , Cal.App. 3 Dist. (Appellate Brief)	Jan. 09, 2008	Brief		—
Cited by	32. Appellant's Opening Brief Alan W. CLAUDINO, Plaintiff/Respondent, v. Patricia Ann PEREIRA, individually and as Trustee of the Patricia Pereira Family Trust, Defendant/ Appellant... 2008 WL 783910, *783910+ , Cal.App. 3 Dist. (Appellate Brief)	Jan. 08, 2008	Brief		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	33. Brief for Petitioners Out Of Plan David A. GATES and Christine A. Gates, Petitioners, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. 2007 WL 7235749, *7235749 , U.S.Tax Ct. (Trial Motion, Memorandum and Affidavit)	June 25, 2007	Motion		—
Cited by	34. Opposition of Defendants Wilshire Escrow Company and Craig Shewfelt to Motion for Reconsideration of Rulings on Demurrers; Declaration of Scott L. Whi... WINDSOR CAPITAL GROUP, LLC, a California limited liability company, Plaintiff, v. INTERNATIONAL EXECUTIVE ENTERPRISE, INC., a Nevada Corporation; on S... 2007 WL 5233649, *5233649 , Cal.Super. (Trial Motion, Memorandum and Affidavit)	July 12, 2007	Motion		—
Mentioned by	35. Joyce v. Tomasini 142 P. 67, 69 , Cal. In Bank. Appeal from Superior Court, Solano County; A. J. Buckles, Judge. Action by Thomas Joyce against G. Tomasini. From a judgment for plaintiff, defendant appeals. Reversed.	July 06, 1914	Case		—
Mentioned by	36. Williams v. Zerlin 2012 WL 2899377, *5 , Cal.App. 2 Dist. Adjacent property owners dispute the existence of an easement for ingress and egress over appellants' property. Appellants assert that the easement was extinguished by adverse...	July 17, 2012	Case		—
Mentioned by	37. Hughes v. Meem 371 P.2d 235, 239 , N.M. Quiet title action. The District Court, Santa Fe County, James M. Scarborough, D. J., rendered judgment for defendant, and plaintiffs appeal. The Supreme Court, Compton, C. J.,...	Mar. 19, 1962	Case		—
Mentioned by	38. Flegel v. Dowling 102 P. 178, 180 , Or. Appeal from Circuit Court, Multnomah County; Arthur L. Frazer, Judge. Action by A.F. Flegel against Peter Dowling. From a decree dismissing complaint, plaintiff appeals. Reversed...	June 01, 1909	Case		—
Mentioned by	39. Opposition of Defendants Nestor Arrellano, Greta Arrellano, Louie Arrellano, Aide Arrellano and on Star Investments, Inc to the Plaintiff's Motion for... WINDSOR CAPITAL GROUP, LLC., a California limited liability company, Plaintiff, v. INTERNATIONAL EXECUTIVE ENTERPRISE INC., a Nevada Corporation; on S... 2007 WL 5233644, *5233644 , Cal.Super. (Trial Motion, Memorandum and Affidavit)	July 11, 2007	Motion		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	40. Demurrer of Defendants Nestor Arrellano, Greta Arrellano, Louie Arrellano, Aide Arrellano and on Star Investments, Inc to the Complaint; Memorandum of... WINDSOR CAPITAL GROUP, LLC., a California limited liability company, Plaintiff, v. INTERNATIONAL EXECUTIVE ENTERPRISE INC., a Nevada Corporation; on S... 2007 WL 5233643, *5233643, Cal.Super. (Trial Motion, Memorandum and Affidavit)	May 18, 2007	Motion		—
—	41. Miller and Starr California Real Estate s 8:61, Description of the property-In general; effect of deficient or ambiguous descriptions The deed must adequately describe the property. Real property can be transferred only by an instrument in writing subscribed by the grantor or its agent. In order to be effective...	2016	Other Secondary Source	—	—
—	42. Miller and Starr California Real Estate s 8:64, Description of the property-Description by reference to a map or survey	2016	Other Secondary Source	—	—
—	43. Williston on Contracts s 29:20, Description of property	2015	Other Secondary Source	—	—
—	44. Witkin, California Summary 10th Real Property s 271, Methods of Description. Witkin, California Summary 10th Real Property The deed should describe the property with reasonable certainty, and various methods have been approved. (See 14 Powell § 81A.05; C.E.B., 2 Real Property Sales Transactions 3d, §...	2016	Other Secondary Source	—	—
—	45. Cal. Jur. 3d Deeds s 52, Certainty of description Cal. Jur. 3d Deeds A deed containing no definite or ascertainable description is void for uncertainty. To constitute a complete and perfect grant, it must in some way appear on the face of the...	2016	Other Secondary Source	—	—
—	46. Cal. Jur. 3d Deeds s 53, Certainty of description-Errors and omissions Cal. Jur. 3d Deeds A deed is not necessarily void for uncertainty because of errors or inconsistency in some of the particulars of the description. The instrument will generally be sustained if it is...	2016	Other Secondary Source	—	—

Treatment	Title	Date	Type	Depth	Headnote(s)
—	47. Cal. Jur. 3d Deeds s 54, Use of extrinsic or parol evidence to make description certain Cal. Jur. 3d Deeds Despite an uncertain description, if the intention of the parties can be gathered from the deed, or from oral proof, the grant is not void; and a description is sufficient if,...	2016	Other Secondary Source	—	—
—	48. Cal. Jur. 3d Deeds s 55, Description by lot, street, house number Cal. Jur. 3d Deeds It is essential to the validity of a conveyance that the thing conveyed be described so as to be capable of identification, but it is not essential that the conveyance should...	2016	Other Secondary Source	—	—
—	49. Cal. Jur. 3d Deeds s 61, Reference to map or other writing Cal. Jur. 3d Deeds A deed is not void for uncertainty merely because its descriptive features depend on a reference to another instrument if the latter is sufficiently identified, produced, and, in...	2016	Other Secondary Source	—	—
—	50. Cal. Jur. 3d Deeds s 62, Reference to map or other writing-Effect Cal. Jur. 3d Deeds When a deed refers for a description of a property conveyed to a description contained in another instrument or to a map, the other instrument or map is regarded as incorporated...	2016	Other Secondary Source	—	—
—	51. CJS Deeds s 56, Omissions in description Out Of Plan CJS Deeds Where a deed applied to the subject matter shows a manifest omission in the description, and there is sufficient data furnished by the deed to supply the omission, it may be...	2016	Other Secondary Source	—	—
—	52. UNFAIR COMPETITION Out Of Plan 10 Harv. L. Rev. 275 , 298 UNFAIR competition, as the designation of a legal wrong which the law will undertake to redress or prevent, has only of late years begun to make its appearance in the books. To...	1896	Law Review	—	—

3 Cal. Real Est. § 8:64 (4th ed.)

Miller and Starr California Real Estate 4th
June 2016 Update
By Members of the Firm of Miller Starr Regalia
Chapter 8. Deeds and Descriptions
Rewritten by Karl E. Geier
G. Property Conveyed

[Correlation Table](#)

§ 8:64. Description of the property—Description by reference to a map or survey

Description by reference to a government survey. Most land in California not included in a valid grant or pueblo established under Spanish or Mexican law prior to the Treaty of Guadalupe Hidalgo passed into the public domain and had to be surveyed under the official United States survey system for public lands, before it could be conveyed or patented into public ownership.¹ Federal law required the public lands to be divided by north and south lines run to the true meridian, and by other lines crossing them at right angles, so as to form townships of six miles square. The public domain could not legally be sold or conveyed, and any patent or other conveyance could not become effective, until the survey was completed.² The standard survey system involved the creation of a grid dividing the land into townships that were then surveyed into sections with reference to two geometrically defined lines, a “base” (east-west) and a “meridian” (north-south). Each township, six miles square, contains 36 sections, each one mile square, with sections laid out and numbered in a specific sequence that is uniform for all townships across the country.³

Validity of conveyance by reference to federal survey designation. A legal description can refer to a specific township and section by number, or to an aliquot portion of the section, meaning a description referencing a fraction of a section rather than of area (such as the northeast quarter of the southwest quarter of the northwest quarter of a section designated by number in a township and range designated by number and reference to the applicable base and meridian).⁴ Such a description is valid as a legal description in a deed.⁵ If the U.S. government survey included designations of lots or fractional quarters, the lot designations also are proper references when used in a legal description.⁶ The parcels as described are *not* legally created as separate parcels by the survey or the patent containing the description, and such a designation therefore does not demonstrate a lawful subdivision.⁷ If the parcels were conveyed onto several ownerships by reference to the standard survey system at a time when such separate conveyances were lawful, however, then the parcels so created are legal, may be separately described and conveyed, and do not merge by reason of coming into common ownership by subsequent conveyances.⁸

Surveys of swamp and overflowed lands; townsite surveys. A number of other types of government surveys were used, including swamp and overflow lands surveys, government resurveys, and townsite maps or plats adopted under early townsite laws. For swamp and overflow lands,⁹ the patent describing land by reference to the survey is deemed to include the surveyor's plats, field notes and records,¹⁰ the plat and field notes of the survey are as much a part of the description of the land granted in a patent as if they were fully incorporated by reference.¹¹ Under the townsite acts,¹² a reference to the land by lot and block is valid as a legal description, but is deemed to incorporate by reference and must be interpreted by reference to the plats, field notes and records of the surveyor who laid out the townsite physically on the ground.¹³

Legality of conveyance by reference to government map or survey. As with metes and bounds descriptions,¹⁴ there are thousands of parcels of land that were legally created by conveyances referring to government maps and surveys, and to the maps resulting from such surveys. If a parcel was legally created at the time it was first conveyed, it continues to be legally created,¹⁵ and may be validly conveyed under the Subdivision Map Act.¹⁶ If a parcel described on such a map or survey was not conveyed into separate ownership prior to the applicable subdivision statute, then the recording of the map, as such, did not effect a subdivision and the property must be validly subdivided in compliance with current law before it can be so conveyed.¹⁷ Assuming the parcel was validly created, or that it is presumed to be validly created,¹⁸ a description by reference to such a map is sufficient for purposes of determining the validity of a deed as containing an adequate description of the property conveyed.¹⁹

Conveyance by reference to an official map. Prior law and the current Subdivision Map Act provide for the recording of an “official map” of a city, town or subdivision, showing lot or block numbers,²⁰ prepared by the city or county engineer and approved by the governing body.²¹ When such a map has been adopted, it is lawful and sufficient to describe the lots or blocks in any deed or conveyance, contract or obligation affecting any of such lots or blocks, by reference to their description on the official map.²² Such a map, if it was certified and recorded in compliance with the statute, is the equivalent of a subdivision map both for purposes of creating the lots as legal parcels, and for purposes of valid legal descriptions in a deed.²³

Conveyance by reference to recorded subdivision or parcel map. Under the current provisions of the Subdivision Map Act, an approved final subdivision or parcel map is required for the division of land that was not previously legally divided.²⁴ A conveyance of a lot or parcel described by reference to a recorded subdivision or parcel map is valid as a description of the real property conveyed and in a legal conveyance.²⁵ Until the required map has been approved and *recorded*, however, it is unlawful for a deed or other conveyance to refer to the property by lot, block, initial or other designation.²⁶ If the lot was the product of a division of four or fewer parcels that occurred prior to March 4, 1972, and there was no local ordinance requiring a parcel map at that time, the parcel is presumed validly created.²⁷ It may also be deemed created lawfully by a certificate of exception applied for prior to the same date.²⁸

Conveyance by reference to a record of survey. Prior to September 17, 1965, a record of survey map could be filed to establish the fact that a proposed division did not constitute a subdivision under the provisions of the Subdivision Map Act and applicable local ordinance.²⁹ This was most common when four or fewer parcels were created, because a division of four or fewer parcels was not a “subdivision” under the provisions of the Subdivision Map Act as it was then in effect.³⁰ After September 17, 1965, a record of survey showing the creation of additional parcels from previously contiguous units could not be filed except with an attached certificate of compliance with the Subdivision Map Act and local ordinance, executed by the city engineer or county engineer, depending on whether the land was within an incorporated city.³¹ Provisions for a licensed surveyor to file a record of survey with the county surveyor continue in effect; these provisions apply whenever an owner completes a survey of property.³² After the record of survey is examined by the county surveyor, it is required to be filed with the county recorder.³³ A record of survey, therefore, may or may not be the instrument which creates a legal parcel, although many legal parcels in fact were created and exist solely by virtue of description in records of survey and the conveyances made under them. A deed which describes land by reference to a recorded record of survey (such as “Lot B of Record of Survey filed August 4, 1944”) is a valid and adequate description of the land for conveyancing purposes.³⁴

Conveyance by reference to other recorded or unrecorded maps or surveys. The general rule is that a deed or other instrument of conveyance adequately describes the property conveyed if it can be identified or located on the ground and applied to a specific parcel of property to the exclusion of other property.³⁵ A deed that describes the property by reference to a recorded or unrecorded map or survey usually meets this requirement if the map is recorded or is otherwise sufficiently identified, produced and established as a matter of evidence.³⁶ Thus, if the deed references the map and is sufficiently precise in describing the portion of the property in the map or survey that is conveyed, the description is adequate and the deed is valid, whether or not the map is recorded.³⁷ If the map is recorded, identification of the map is usually a matter of calling out the recording information and the lot, parcel or portion of the map that is conveyed. If the map or survey is not of record, then a conveyance still may be valid if the map can be located and put in evidence.³⁸

Comment:

The title may be considered unmarketable or uninsurable until the description is adjudicated and reduced to a recordable judgment confirming the location and boundaries by other means.³⁹

Inadequate map reference. Where a deed refers to a named tract without any reference to a map, the court considers this as *prima facie* evidence of the insufficiency of the description.⁴⁰ However, parol evidence is admissible to establish that there is only one map that corresponds to the incomplete reference. If this fact can be shown to the satisfaction of the court, the map becomes part of the description under the “incorporation by reference” doctrine, as if it had been written into the deed.⁴¹ In addition, if there is more than one map and each complements the other, the description may be aided by these maps.⁴² But if the maps are inconsistent, such evidence will not help or cure the incomplete description.⁴³

Conveyance by reference to an unrecorded map generally is unlawful. The practice of creating divisions of land by reference to unrecorded maps was declared unlawful by statute as early as 1893, and a conveyance by reference to such a map has been illegal and void since at least that time.⁴⁴ A conveyance now may only be made with reference to a parcel or subdivision map that is recorded after approval in compliance with the Subdivision Map Act and local ordinance, or pursuant to a valid exception to such laws.⁴⁵ A map or survey that has been recorded in compliance with law, or that was recorded before laws regulating design and improvement of subdivisions existed, is not a “parcel map” or “subdivision map” within the meaning of the current statute allowing for conveyance by reference to a recorded map and providing that such a map constitutes a certificate of compliance with respect to the legality of the parcels.⁴⁶ However, a conveyance is still lawful if the parcel was lawfully created in compliance with, or exempt from, laws regulating the design and improvement of subdivisions at the time the subdivision was established.⁴⁷

Assessor's parcel map. A legal description making reference to an assessor's parcel map by volume, page and parcel may be a legally sufficient description for a contract agreeing to convey real estate to be enforceable.⁴⁸ It is not generally considered to be an appropriate or adequate description for a deed or other instrument of conveyance, although it may, in some instances, be sufficiently definite and certain in the context of an instrument to identify the land intended to be conveyed. An assessor's map also may describe parcels by reference to instruments that define boundaries of land and that would be appropriate for use in a legal description.⁴⁹ The actual assessor's map, however, is not required to be recorded, and the assessor may number or letter parcels in a manner approved by the Board of Supervisors, and renumber the parcels from time to time, with the only requirement being that the copy on file in the assessor's office being up to date and showing current parcel number for the current fiscal year and the preceding fiscal year.⁵⁰ As a result, the reference to an unrecorded assessor's map and parcel without more, may result in an ambiguous or fatally uncertain description.⁵¹ By statute, a deed or other instrument of conveyance

may not describe land by reference to an assessor's map that has not been *recorded* in the office of the county recorder for the county in which the land is located.⁵²

© 2016 Thomson Reuters/West. No Claim to Orig. U.S. Govt. Works

Footnotes

- 1 See, generally, *Robinson, Land in California* at pp. 91–109 (U. of Cal. Press, 1948).
- 2 [Kimball v. McKee](#), 149 Cal. 435, 437–438, 86 P. 1089 (1906).
The statutory basis for the United States Survey System is 43 U.S.C.A. §§ 751 to 753, which derive from the Acts of May 18, 1796, c. 29, § 2, 1 Stat. 465 and subsequent legislation and have been in effect since long before California became a state in 1850.
- 3 [Kimball v. McKee](#), 149 Cal. 435, 437–438, 86 P. 1089 (1906); [People ex rel. Brown v. Tehama County Bd. of Sup'rs](#), 149 Cal. App. 4th 422, 434 n.7, 56 Cal. Rptr. 3d 558 (3d Dist. 2007).
For a more extensive discussion of the history and application of the United States Survey System and its use in legal descriptions, see U.S. Bureau of Land Management, Manual of Surveying Instructions, at 1-10 (1973) (available on-line at <http://www.blm.gov/cadastral/Manual/73man/id1.htm>). The standard survey system also includes specific rules for correction lines, water boundaries, and adjacency to land excluded from the survey (such as pre-existing rancho or pueblo lands), which vary the standard six by six mile township grid in some instances. See also [McDonald v. Mason](#), 25 Cal. App. 2d 17, 24–25, 76 P.2d 212 (1st Dist. 1938) (application of U.S. Survey system to “meander lines” along non-navigable waters in federal patent).
- 4 See 43 U.S.C.A. §§ 751 to 753 (providing for the division of sections into quarter sections and quarter-quarter sections under the United States Public Land Survey System). See also U.S. Bureau of Land Management, Manual of Surveying Instructions, Subdivision of Sections, §§ 3-74 to 3-92 (9th ed. 1973).
- 5 [Stanton v. Hotchkiss](#), 157 Cal. 652, 655–656, 108 P. 864 (1910) (also holding that *judicial notice* may be taken of the government survey system for purposes of interpreting a deed making reference to sections, townships and ranges); [California Real Estate Co. v. Walkup](#), 27 Cal. App. 441, 448, 150 P. 385 (3d Dist. 1915) (description in an installment land contract).
- 6 See [John Taft Corp. v. Advisory Agency](#), 161 Cal. App. 3d 749, 753–755, 207 Cal. Rptr. 840 (2d Dist. 1984) for a description of the survey lots used in the federal survey system. See also [Foss v. Johnstone](#), 158 Cal. 119, 127–129, 110 P. 294 (1910).
- 7 [People ex rel. Brown v. Tehama County Bd. of Sup'rs](#), 149 Cal. App. 4th 422, 438–439, 56 Cal. Rptr. 3d 558 (3d Dist. 2007); [John Taft Corp. v. Advisory Agency](#), 161 Cal. App. 3d 749, 753–754, 757, 207 Cal. Rptr. 840 (2d Dist. 1984).
See 81 Op. Cal. Atty Gen. 144 (1998).
- 8 [Gardner v. County of Sonoma](#), 29 Cal. 4th 990, 1001–1002, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003) (“[W]hile antiquated maps served to facilitate land conveyances involving the properties they depicted, such maps generally could not alter the legal status of

those properties *without the attendant conveyances.*" 29 Cal. 4th at 1002, emphasis added.); *Lakeview Meadows Ranch v. County of Santa Clara*, 27 Cal. App. 4th 593, 597, 32 Cal. Rptr. 2d 615 (6th Dist. 1994).

9

See § 8:76 (non-merger of multiple parcels conveyed by single deed). See Parker, A Title Report as to Swamp and Overflowed Lands Sold in California, 13 W. St. U. L. Rev. 563 (1986); Beasley, Wetlands—A Definition, 13 W. St. U. L. Rev. 553 (1986).

Swamp and overflow lands were conveyed to the state *en masse* by federal legislation at the time of statehood; as a result, only the state, and not the federal government, could convey title to such lands if they were not conveyed to private ownership by the federal government prior to that date, and only the state thereafter could patent such lands to private ownership. *Wright v. Roseberry*, 121 U.S. 488, 496, 7 S. Ct. 985, 30 L. Ed. 1039 (1887). See *Heckman v. Swett*, 99 Cal. 303, 306–307, 4 Cal. Unrep. 312, 33 P. 1099 (1893), *aff'd*, 107 Cal. 276, 40 P. 420 (1895) (patent to swamp and overflow lands under state law for disposition of swamp land could not include the beds and shores of navigable streams below high water mark).

10

See § 8:67 (water as a property boundary; swamp and overflowed lands).

11

Foss v. Johnstone, 158 Cal. 119, 128, 110 P. 294 (1910).

12

The first townsite acts in California are described in *Claudino v. Pereira*, 165 Cal. App. 4th 1282, 1285–1286, 82 Cal. Rptr. 3d 464 (3d Dist. 2008) as including Stats. 1867 to 1868, ch. 523, which authorized the recording of both the plat and the field notes as public records in the recorder's office.

13

Claudino v. Pereira, 165 Cal. App. 4th 1282, 1287–1289, 82 Cal. Rptr. 3d 464 (3d Dist. 2008) (affirming the admissibility of surveyor's field notes and other extrinsic evidence where township plat, referenced in the deed, conflicted with the surveyor's field notes).

14

See § 8:63 (description by metes and bounds).

15

See § 20:3 (Subdivision Map Act; application to land divisions prior to the effective date of the Act), § 20:44 (merger of contiguous parcels).

16

Gov. Code, § 66499.32.

Lakeview Meadows Ranch v. County of Santa Clara, 27 Cal. App. 4th 593, 597–598, 32 Cal. Rptr. 2d 615 (6th Dist. 1994).

17

Gardner v. County of Sonoma, 29 Cal. 4th 990, 1001–1002, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003); *John Taft Corp. v. Advisory Agency*, 161 Cal. App. 3d 749, 755, 207 Cal. Rptr. 840 (2d Dist. 1984).

See 81 Op. Cal. Atty Gen. 144 (1998) (multiple contiguous lots on a federal survey map may not be separately conveyed without compliance with the Map Act).

See § 20:5 (subdivisions; ancient subdivisions as not creating valid parcels for purposes of the Map Act).

18

Any parcel created prior to March 4, 1972, is presumed valid if it resulted from a division of fewer than five parcels and no local ordinance then regulated such division. Gov. Code, § 66412, *subd.* (a).

19 See [Gardner v. County of Sonoma](#), 29 Cal. 4th 990, 1001, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003) (dictum). See also [People ex rel. Brown v. Tehama County Bd. of Sup'rs](#), 149 Cal. App. 4th 422, 438–439, 56 Cal. Rptr. 3d 558 (3d Dist. 2007).

Comment:

It may be desirable to obtain a certificate of compliance under [Gov. Code, § 66499.35](#) to avoid future disputes concerning the legality of such a parcel.

See [§ 20:52](#) (Map Act; certificate of compliance).

20 [Gov. Code, §§ 66499.50 to 66499.58](#) (originally enacted in 1903 as former as Pol. Code, §§ 3658a et seq., Stats. 1903, ch. 282, § 1, and subsequently amended, recodified in 1943 as [Bus. & Prof. Code, §§ 11650 to 11658](#), by Stats. 1943, ch. 282, §§ 1 to 2; recodified into Government Code by Stats. 1975, ch. 24, § 26.5).

21 [Gov. Code, §§ 66499.52, 66499.54, 66499.55.](#)

22 [Gov. Code, § 66499.57.](#)

The surveys and field notes of the surveyor or engineer who prepared the map also must be filed in the city or county engineer's office, and are part of the public record.

23 [Gov. Code, § 66499.35, subd. \(e\)](#) (official map prepared pursuant to [Gov. Code, § 66499.52](#) shall constitute a certificate of compliance with respect to the parcels of property described therein); [Gov. Code, § 66499.57.](#)

See also [Gardner v. County of Sonoma](#), 29 Cal. 4th 990, 998–999, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003) (dictum; map at issue was found not to be an official map).

24 [Gov. Code, § 66499.30, subds. \(a\), \(b\).](#)

See [§ 20:2](#) (Subdivision Map Act; restrictions on sale or improvement without compliance.).

25 [Gov. Code, §§ 66499.30, subds. \(c\), \(d\), 66499.35, subd. \(d\).](#)

[Gardner v. County of Sonoma](#), 29 Cal. 4th 990, 1002, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003).

26 [Gov. Code, § 66499.30.](#)

27 [Gov. Code, § 66412.6.](#)

28 [Gov. Code, § 66412.7.](#) See [Gov. Code, § 66422.](#)

See [Gardner v. County of Sonoma](#), 29 Cal. 4th 990, 999, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003) (noting that certificates of exception were only authorized between 1967 and 1972, and only in Los Angeles County). The validity of a conveyance by reference to such a certificate of exception has not been determined by case law.

29 Former [Bus. & Prof. Code, §§ 11535, 11576](#). For discussion of these provisions, see [18 Op. Cal. Atty Gen. 110 \(1951\)](#); [12 Op. Cal. Atty Gen. 74 \(1948\)](#). See 1 Bowman, *Ogden's Revised California Real Property Law*, §§ 14.18 to 14.19 (1974). The Attorney General had opined prior to 1965 that if a division of land was exempt from the applicable subdivision ordinance, the county surveyor was *required* to forward a record of survey showing the division to the county recorder upon presentation by the subdivider, if the record of survey complied with the Land Surveyor's Act. [34 Op. Cal. Atty Gen. 39, 40 \(1959\)](#).

- 30 [Bright v. Board of Supervisors](#), 66 Cal. App. 3d 191, 193–194, 135 Cal. Rptr. 758 (4th Dist. 1977). See also [58 Op. Cal. Atty Gen. 593](#) (1975).
- 31 [Bus. & Prof. Code, § 8762.5](#).
- 32 [Bus. & Prof. Code, § 8762](#).
- 33 [Bus. & Prof. Code, §§ 8762, subd. \(e\), 8768.5](#).
See [77 Op. Cal. Atty Gen. 231](#) (Nov. 18, 1994).
- 34 The contents of a record of survey are required to reflect a field survey and to conform with the standards of professional land surveyors ([Bus. & Prof. Code, § 8762, subd. \(a\)](#)). As such, if competently prepared by a private licensed surveyor and competently reviewed by the county surveyor, it will contain adequate information to identify the land. Accordingly, under the general principles of construction of deeds that refer to other documents and maps, discussed in the three preceding sections of this chapter and in the next paragraph of this section, it will usually be an adequate description.
- 35 [Rea v. Haffenden](#), 116 Cal. 596, 602–603, 48 P. 716 (1897); [McCullough v. Olds](#), 108 Cal. 529, 532, 41 P. 420 (1895) (map; conveyance by lot and block); [Best v. Wohlford](#), 144 Cal. 733, 736–737, 78 P. 293 (1904) (assessment; standard of identification same as for a deed).
See [§ 8:61](#) (description of property; in general).
- 36 [McCullough v. Olds](#), 108 Cal. 529, 532–534, 41 P. 420 (1895) (recorded map; deed referenced the map by recording book and page, held not void for uncertainty despite failure to state the state, county and city in which the property was situated); [Colton Land & Water Co. v. Swartz](#), 99 Cal. 278, 284–285, 33 P. 878 (1893) (deed referenced map depicted in the recorder's office although not recorded; erroneous book and page disregarded).
- 37 [McCullough v. Olds](#), 108 Cal. 529, 532, 41 P. 420 (1895); [Caldwell v. Center](#), 30 Cal. 539, 542–543, 1866 WL 795 (1866) (dictum; deed found invalid as not recorded but only, apparently, “tipped in” to the recorder's book and then referred to in the deed as recorded).
- 38 [Donnelly v. Tregaskis](#), 154 Cal. 261, 264, 97 P. 421 (1908) (rule applied to description in declaration of homestead); [Colton Land & Water Co. v. Swartz](#), 99 Cal. 278, 284–285, 33 P. 878 (1893); [Best v. Wohlford](#), 144 Cal. 733, 737, 78 P. 293 (1904). By contrast, in [Caldwell v. Center](#), 30 Cal. 539, 543, 1866 WL 795 (1866), the map referred to in the deed as having been recorded in fact had not been recorded and in [Cadwalader v. Nash](#), 73 Cal. 43, 46–47, 14 P. 385 (1887), the deed referred to a map which could have been either of two different maps, and was found invalid. See also [Edwards v. City of Santa Paula](#), 138 Cal. App. 2d 375, 380–384, 292 P.2d 31 (2d Dist. 1956) (validity of assessment; standard of validity held identical to standard applicable to deeds and found totally flawed due to ambiguous map references).
- 39 See [§ 2:17](#) (marketable or merchantable title), [§ 7:50](#) (title insurance; marketability of title), [§ 7:121](#) (title insurance endorsements; description of the insured property).
- 40 [Fox v. Townsend](#), 152 Cal. 51, 53–54, 91 P. 1004 (1907); [Miller v. Williams](#), 135 Cal. 183, 184–185, 67 P. 788 (1901); [Edwards v. City](#)

of Santa Paula, 138 Cal. App. 2d 375, 381–382, 292 P.2d 31 (2d Dist. 1956).

41 Fitzimons v. Atherton, 162 Cal. 630, 632, 124 P. 250 (1912); Best v. Wohlford, 144 Cal. 733, 735–736, 78 P. 293 (1904); Adams v. Slee, 92 Cal. App. 708, 712–713, 268 P. 959 (3d Dist. 1928).

42 Baird v. Monroe, 150 Cal. 560, 569–571, 89 P. 352 (1907), dismissed, 207 U.S. 580, 28 S. Ct. 257, 52 L. Ed. 349 (1907); Stewart v. Atkinson, 96 Cal. App. 50, 52–55, 273 P. 606 (1st Dist. 1928).

43 Cadwalader v. Nash, 73 Cal. 43, 45–49, 14 P. 385 (1887); Edwards v. City of Santa Paula, 138 Cal. App. 2d 375, 382–383, 292 P.2d 31 (2d Dist. 1956).

44 See, generally, Gardner v. County of Sonoma, 29 Cal. 4th 990, 1001, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003); Morehart v. County of Santa Barbara, 7 Cal. 4th 725, 760–761, 29 Cal. Rptr. 2d 804, 872 P.2d 143 (1994).

See § 20:3 (Subdivision Map Act; application to land divisions prior to the effective date of the Act).

45 Gov. Code, § 66499.30, subds. (a), (b), (c).

46 Gov. Code, § 66499.35, subd. (d). See Gov. Code, § 66434 (form of final map), § 66445 (form of parcel map); Gov. Code, §§ 66464 to 66467 (recording of final subdivision and parcel maps). Filing a final subdivision map or parcel map with the county recorder finally and conclusively determines validity of the map and imparts constructive notice thereof. Gov. Code, § 66468. Other maps have no such imprimatur of legality. No conveyance may be made by lot or block number with reference to a recorded map unless it is a final subdivision or parcel map so filed for record. Gov. Code, § 66499.30, subd. (c) (The only exception is for an official map as discussed above in this § 8:64.).

See also Witt Home Ranch, Inc. v. County of Sonoma, 165 Cal. App. 4th 543, 551, 81 Cal. Rptr. 3d 123 (1st Dist. 2008).

47 Gov. Code, § 66499.30, subd. (d).

Lakeview Meadows Ranch v. County of Santa Clara, 27 Cal. App. 4th 593, 597–598, 32 Cal. Rptr. 2d 615 (6th Dist. 1994).

Comment:

Property not actually divided, and only shown in a map but remaining in contiguous single ownership until after laws were enacted regulating the design and improvement of subdivisions, is not legally “created” or “established” as a separate parcel under these authorities, so reference to the parcel by reference to the map would not be a legal conveyance. See *Abernathy Valley, Inc. v. County of Solano*, 173 Cal. App. 4th 42, 47–56, 92 Cal. Rptr. 3d 459 (1st Dist. 2009); *Witt Home Ranch, Inc. v. County of Sonoma*, 165 Cal. App. 4th 543, 552–564, 81 Cal. Rptr. 3d 123 (1st Dist. 2008).

See also *Gardner v. County of Sonoma*, 29 Cal. 4th 990, 1002–1003, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003); *Van't Rood v. County of Santa Clara*, 113 Cal. App. 4th 549, 566–578, 6 Cal. Rptr. 3d 746 (6th Dist. 2003).

48 See § 1:25 (description of property to be conveyed).

49 See *Rev. & Tax. Code*, §§ 322 to 326, allowing for description by reference to government surveys, Spanish grant boundaries, city lot and block, official maps, or other unofficial maps, and *Rev.*

& Tax. Code, § 328 allowing for reference to a metes and bounds description.

50

Rev. & Tax. Code, § 327. In other words, there is no assurance the map in the assessor's office will reflect the same parcel number as was used in a conveyance after two or more years have elapsed. See also *Cafferkey v. City and County of San Francisco*, 236 Cal. App. 4th 858, 186 Cal. Rptr. 3d 862 (1st Dist. 2015) (discusses discretion of the assessor to redesignate parcel number).

51

See *Lee v. Fidelity Nat. Title Ins. Co.*, 188 Cal. App. 4th 583, 115 Cal. Rptr. 3d 748 (1st Dist. 2010) (finding an ambiguity on a title policy based on a reference to an assessor's parcel number at variance from a separate metes and bounds description).

52

Rev. & Tax. Code, § 327.

Comment:

Although the statute does not explicitly require reference to the recording information, a deed that refers to an assessor's parcel map that has been recorded, but that does not reference the recording information, is probably invalid under this statute and in any event may be void for vagueness, particularly if more than one parcel has been assigned the same number or the number has been changed. See § 8:61 (description of the property; in general).

Rev. & Tax. Code, § 11911.1 allows the local documentary transfer tax ordinance of a city or county (see § 10:15 (documentary transfer tax)) to require that each deed, instrument or writing by which lands, tenements or other realty is transferred, assigned or otherwise conveyed, to include the tax roll parcel number. It goes on to provide, however, that the parcel number will be used only for administrative and procedural purposes "and will not be proof of title and in the event of any conflicts the stated legal description noted upon the document shall govern." It also provides that an error or omission in such parcel number shall not invalidate the instrument or result in liability on the part of the person who caused the error or omission. Rev. & Tax. Code, § 11911.1.

RECORDING REQUESTED BY

TICOR TITLE INSURANCE COMPANY
Order No. TS-470817-SM

H287 PAGE 584

AND WHEN RECORDED MAIL TO

7575666

Name: Mr. Martin Rajkovich and
Street Address: Mr. George Rajkovich
P.O. Box 381
City & State: Hollister, CA 95023

REC FEE	5-
MICRO	1-
LIEN NOT	
SMPF	10-

Recorded at the request of
TICOR Title Insurance Company of California

JAN 21 1983 8:00 A.M.

George A. Mann, Recorder
SANTA CLARA COUNTY, OFFICIAL RECORDS

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Individual Grant Deed

THIS FORM FURNISHED BY TICOR TITLE INSURERS

TO 1923 CA (12-74)

A. P. N.

ARB No. 326
34
46
ALL
PTN.

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ _____ **FILOR REQUESTS**
DO NOT RECORD STAMP VALUE
() computed on full value of property conveyed, or
() computed on full value less value of liens and encumbrances remaining at time of sale.
() Unincorporated area: () City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Norcal Associates, a California general partnership

hereby GRANT(S) to Martin Rajkovich, a single man, as his separate property, an undivided one-half (1/2) interest, and George Rajkovich, a married man, as his separate property, an undivided one-half (1/2) interest

the following described real property in the City of Cupertino,
County of Santa Clara, State of California:

ALL OF PARCEL "A" AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A PORTION OF NW 1/4 OF SECTION 13, T. 7S., R. 1W., M.D. B. & M.", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 15, 1978 IN BOOK 412 OF MAPS, AT PAGE 50.

Dated January 21, 1983

Norcal Associates, a California general partnership
By Intereal Company, a Tennessee corporation
d/b/a Jovencal, Inc in California

STATE OF CALIFORNIA } ss.
COUNTY OF _____
On _____ before me, the under.

BY *A. Allen Patton* U.P. 1983

(Corporation as a partner of a partnership which is a partner of another partnership)

State of California)
County of Santa Clara) ss.

On January 7, 1983, before me, the undersigned, a notary public, personally appeared William T. Benson known to me to be the vice president and David L. Pogue known to me to be the vice president of The Koll Company, the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be the general partner of Calaveras Associates, a general partnership, said general partnership being known to me to be one of the partners of Norcal Associates the general partnership that executed the within instrument and acknowledged to me that such corporation executed same as a general partner of the general partnership first-above named, that said general partnership executed the same as a partner of Norcal Associates and that said last-named general partnership executed the same.

TO 1954 CA (6-74)

(Corporation as a Partner of a Partnership)

STATE OF CALIFORNIA Tenn.

COUNTY OF Davidson } SS.

On January 5, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared A. Allen Patton, known to me to be the Vice President, and Stephen C. Small, known to me to be the Assistant

Secretary of Intreal Company, the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the partners of Mercal Associates, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

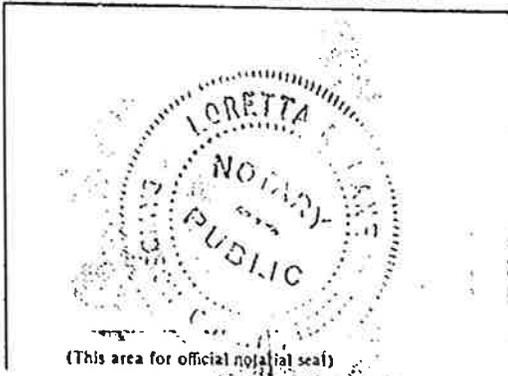
WITNESS my hand and official seal.
Comm. Expire. 10/15/83

Signature Loretta B. Lane



H287 PAGE 586

STAPLE HERE



September 7, 2016

151094

Army Corps of Engineers
1455 Market Street,
San Francisco, CA 94103

RE: Oakland Inner Harbor Tidal Canal Transfer

Dear Merry Goodenough:

RJA has completed a survey of the Oakland Inner Harbor Tidal Canal and have prepared a Tentative Map pursuant to the requirements under the California Subdivision Map Act. The Tentative Map proposes to divide the Oakland Inner Harbor Tidal Canal into 99 parcels, 98 of which are located within the City of Alameda. The City will review and approve this Tentative Map.

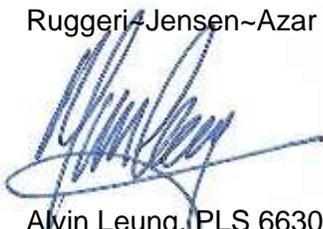
Upon approval of the Tentative Map, RJA will prepare a Final Map in conformance with the California Subdivision Map Act and with the City's approval, the Final Map will be recorded in the County of Alameda Recorder's Office prior to and incorporated into the Deed from the Corps. The Final Map will be prepared under the direction of the undersigned, reviewed, signed and sealed prior to recordation.

By this letter RJA states that:

1. The boundary of the Oakland Inner Harbor Tidal Canal and the lines of the 99 Parcels that will be shown on the Final Map will be readily discernable to all interested parties.
2. All of the Parcels to be shown on the Final Map that are proposed for conveyance are located within the City of Alameda.
3. The reference, within the individual Grant Deeds, to the Parcels shown of the recorded Final Map will be adequate for the conveyance of said Parcels.

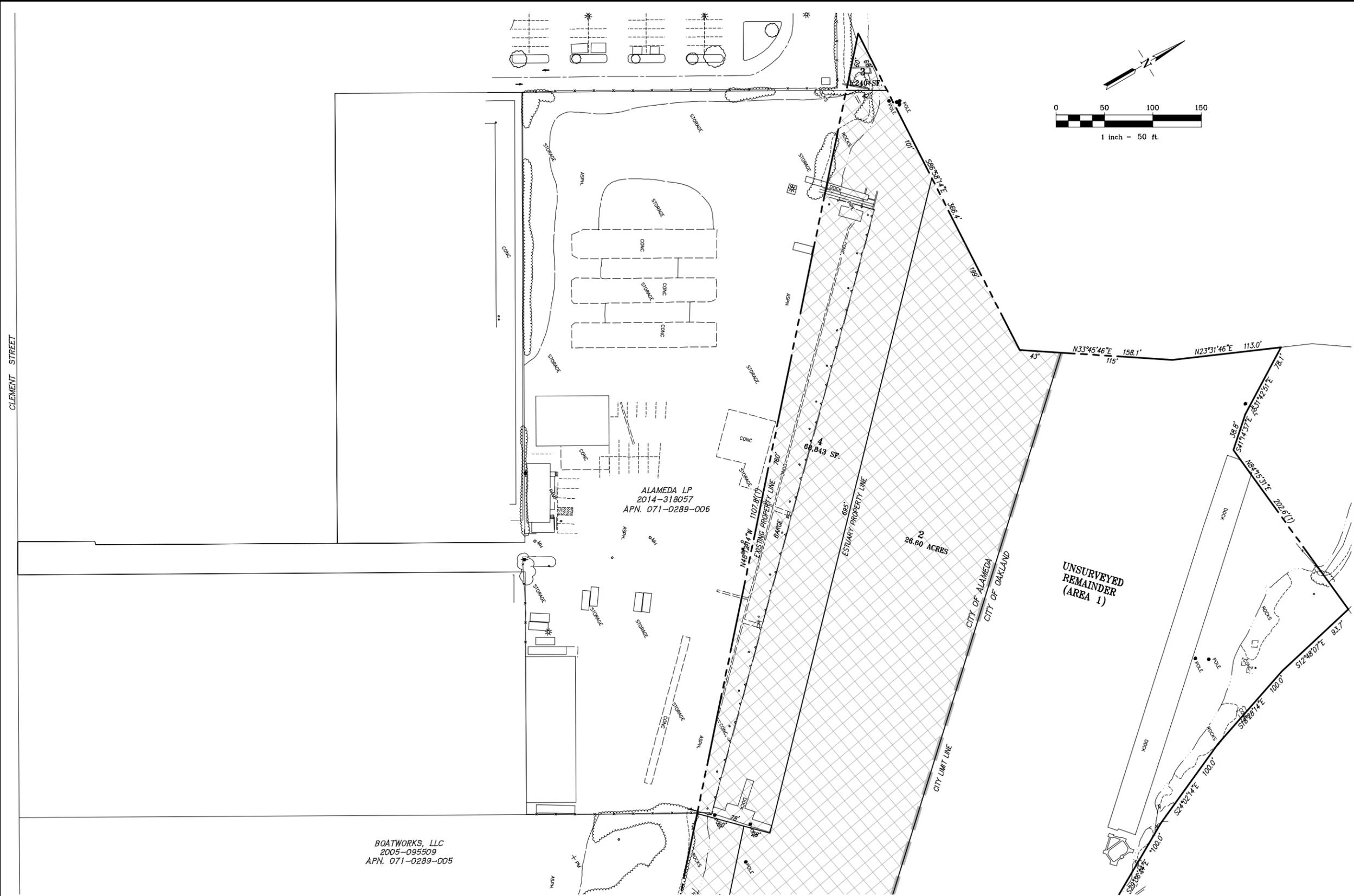
Sincerely,

Ruggeri-Jensen-Azar



Alvin Leung, PLS 6630
Senior Surveyor

G:\14820151\151094\CAD FILES\02-PLANNING\TEXT-MAP\151094-2 LOTTING PLAN.DWG 9/9/2016 3:28:35 PM JOHN ANEZONICH



BOATWORKS, LLC
2005-095509
APN. 071-0289-005

LOTING PLAN TRACT 8337 - OAKLAND INNER HARBOR

CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
FOR: THE CITY OF ALAMEDA

SEE SHEET 3



RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: SEPTEMBER 8, 2016

JOB NO. 151094

SHEET 2 of 10

SEE SHEET 2

ALAMEDA LP
2014-318057
APN. 070-0289-006

BOATWORKS, LLC
2005-095509
APN. 070-0289-005

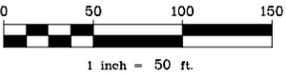
BOATWORKS, LLC
PCL 1, 2012-283517
APN. 070-0290-001

BECK TRUST
PCL 2, 2007-184667
APN. 071-0290-029

BECK TRUST
PCL 1, 2012-283517
APN. 071-0290-029

BECK TRUST
PCL 9, 2007-184667
APN. 071-0290-029

BECK TRUST
PCL 1, 2007-184667
APN. 071-0290-029



UNSURVEYED
REMAINDER
(AREA 1)

APPROXIMATE LOCATION
EXISTING 24" EBUD WATERLINE

SEE SHEET 4

CLEMENT STREET

OAK STREET

BLANDING AVENUE

CITY OF ALAMEDA
CITY OF OAKLAND
CITY LIMIT LINE

26.60 ACRES

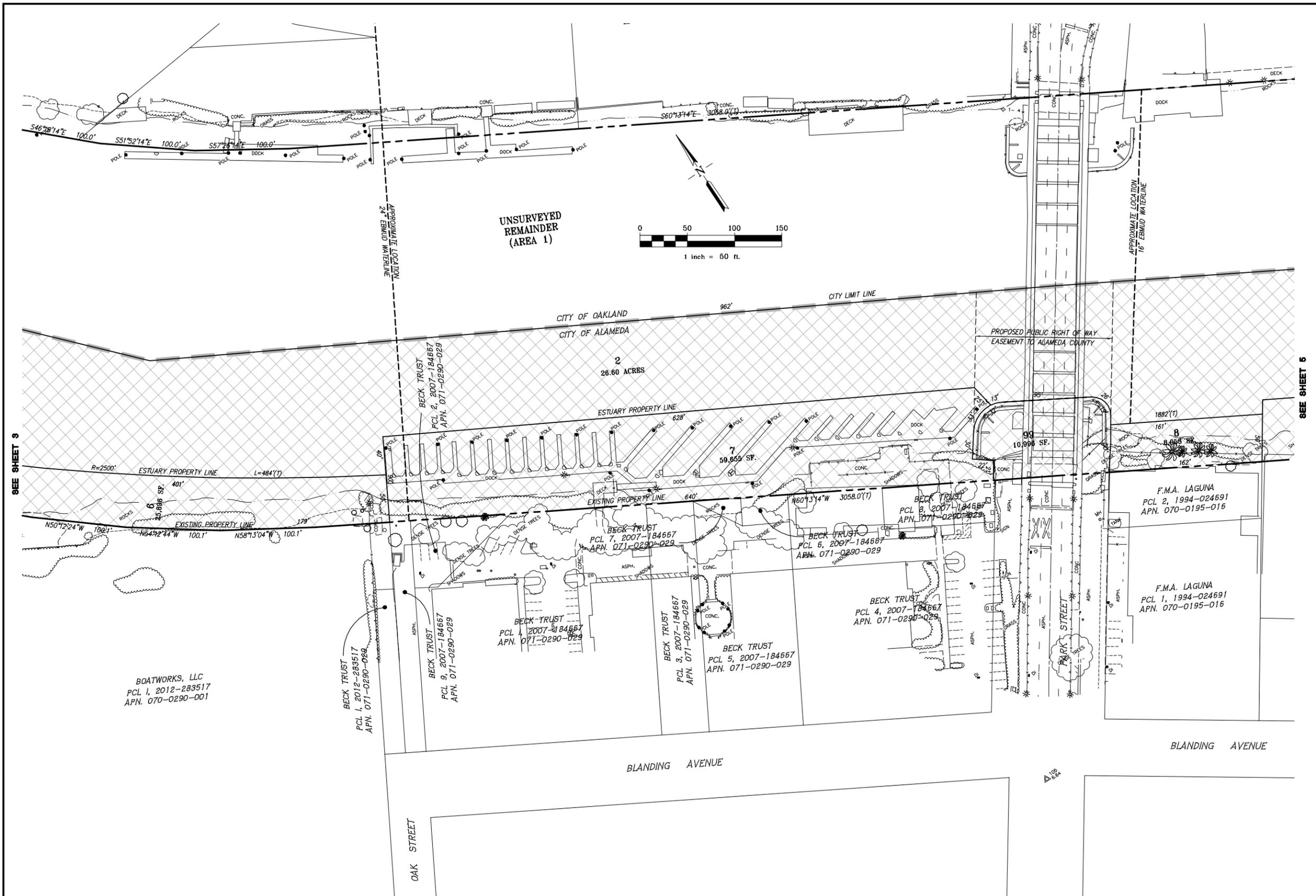
LOTING PLAN

TRACT 8337 - OAKLAND INNER HARBOR

CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
FOR: THE CITY OF ALAMEDA



RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300



G:\182015\151094\CAD FILES\102-PLANNING\TEXT-MAP\151094-4 LOTTING PLAN.DWG 9/8/2016 3:18:55 PM JOHN ANEZONICH

BOATWORKS, LLC
 PCL 1, 2012-283517
 APN. 070-0290-001

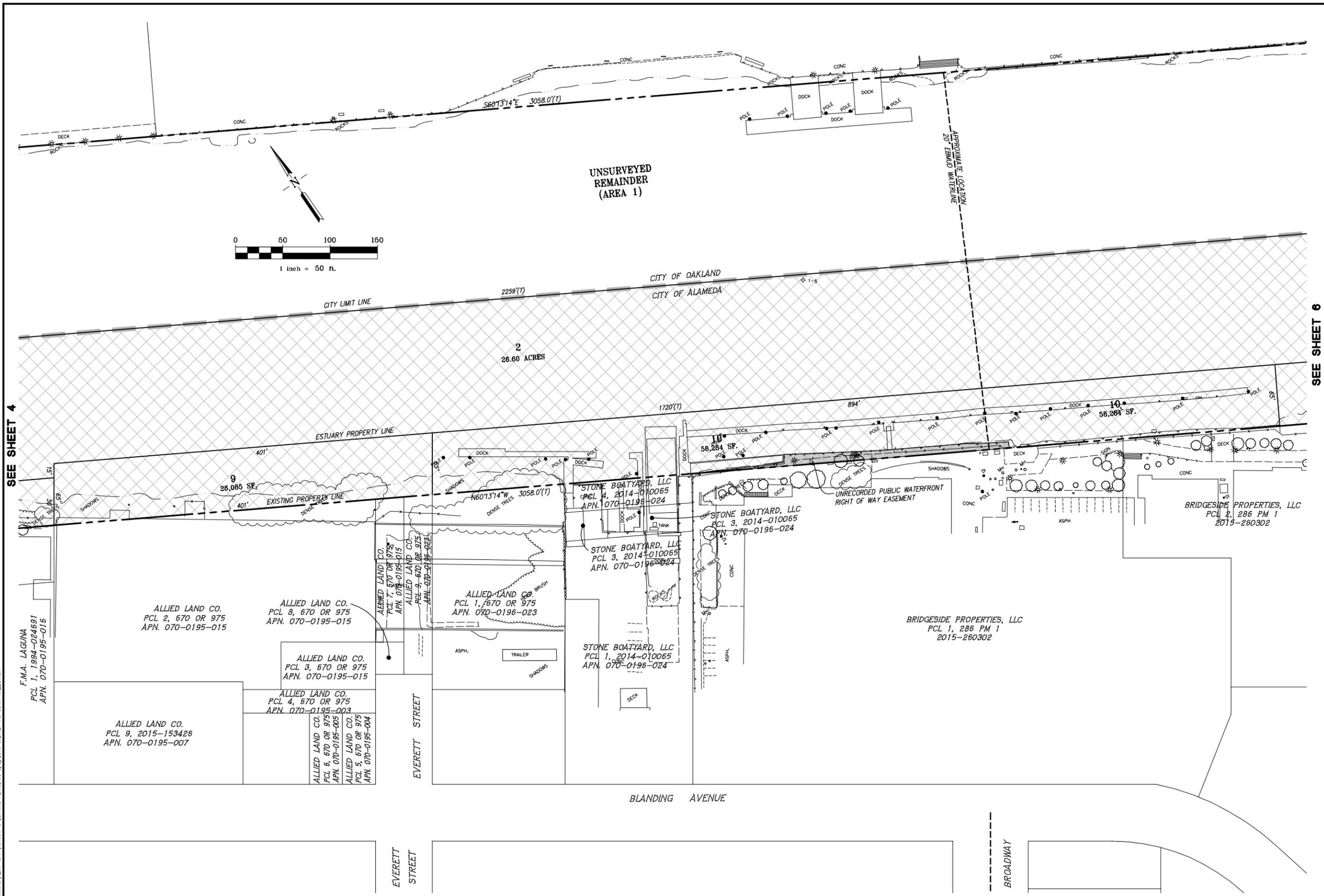
LOTTING PLAN
TRACT 8337 - OAKLAND INNER HARBOR
 CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
 FOR: THE CITY OF ALAMEDA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

G:\2016\151094\151094\151094-5 LOTTING PLAN\DWG-9/8/2016-5:21:27 PM JOHN ANZICHICH

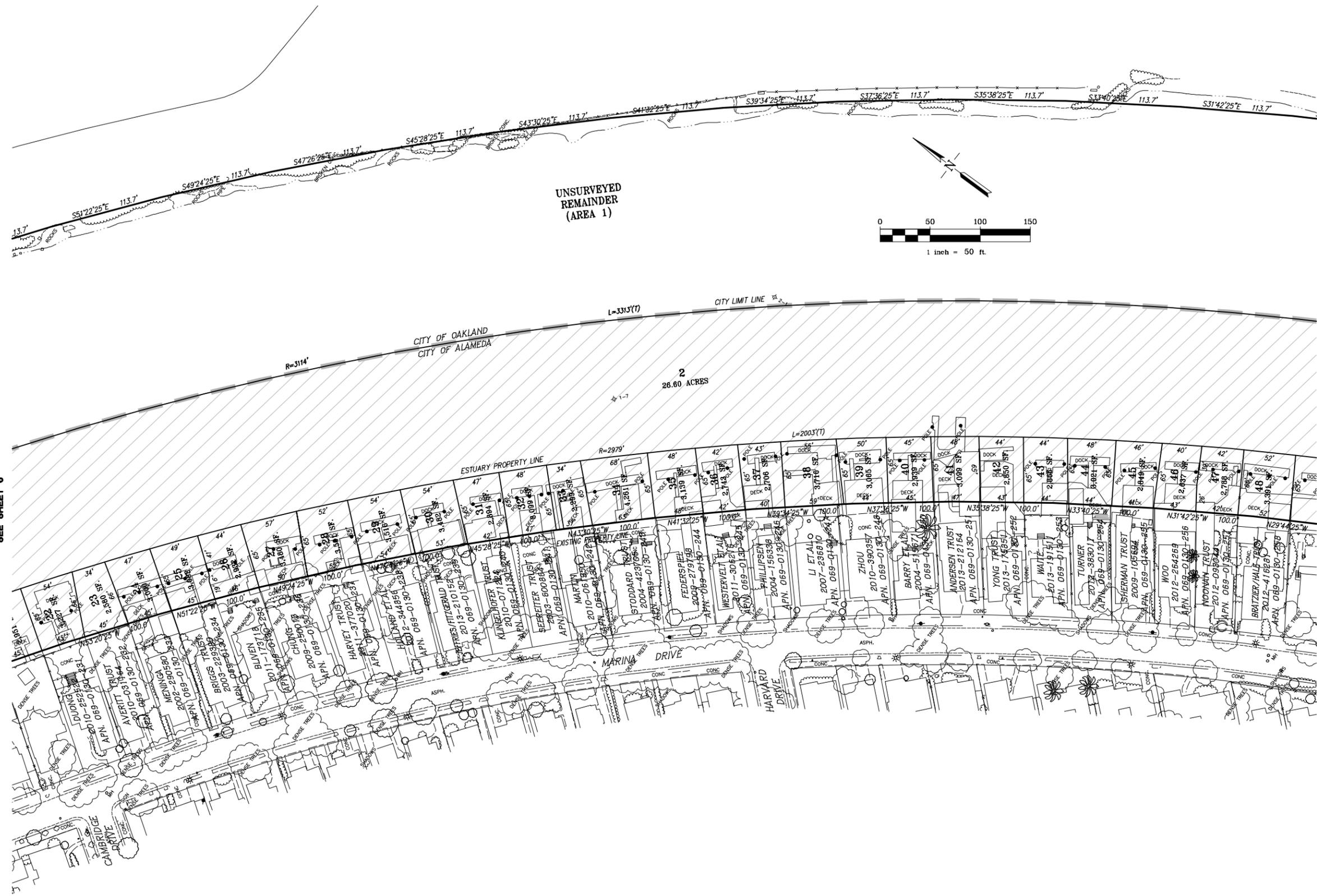
SEE SHEET 4

SEE SHEET 6



LOTING PLAN
TRACT 8337 - OAKLAND INNER HARBOR
 CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
 FOR: THE CITY OF ALAMEDA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300



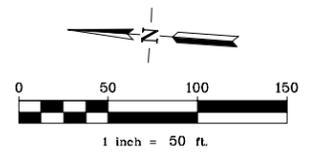
SEE SHEET 6

SEE SHEET 8

LOTING PLAN
TRACT 8337 - OAKLAND INNER HARBOR
 CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
 FOR: THE CITY OF ALAMEDA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

G:\J2015\151094\CAD FILES\102-PLANNING\TEXT-MAP\151094-7 LOTTING PLAN.DWG 8/8/2016 3:26:27 PM JOHN WNEZDICH



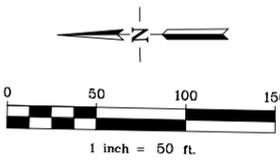
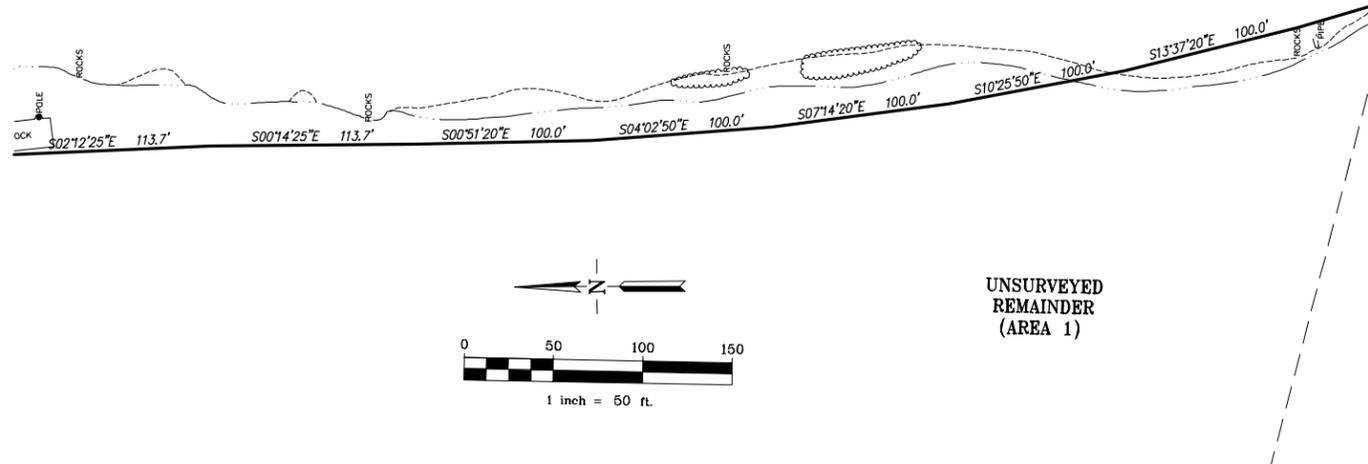
SEE SHEET 7

SEE SHEET 9

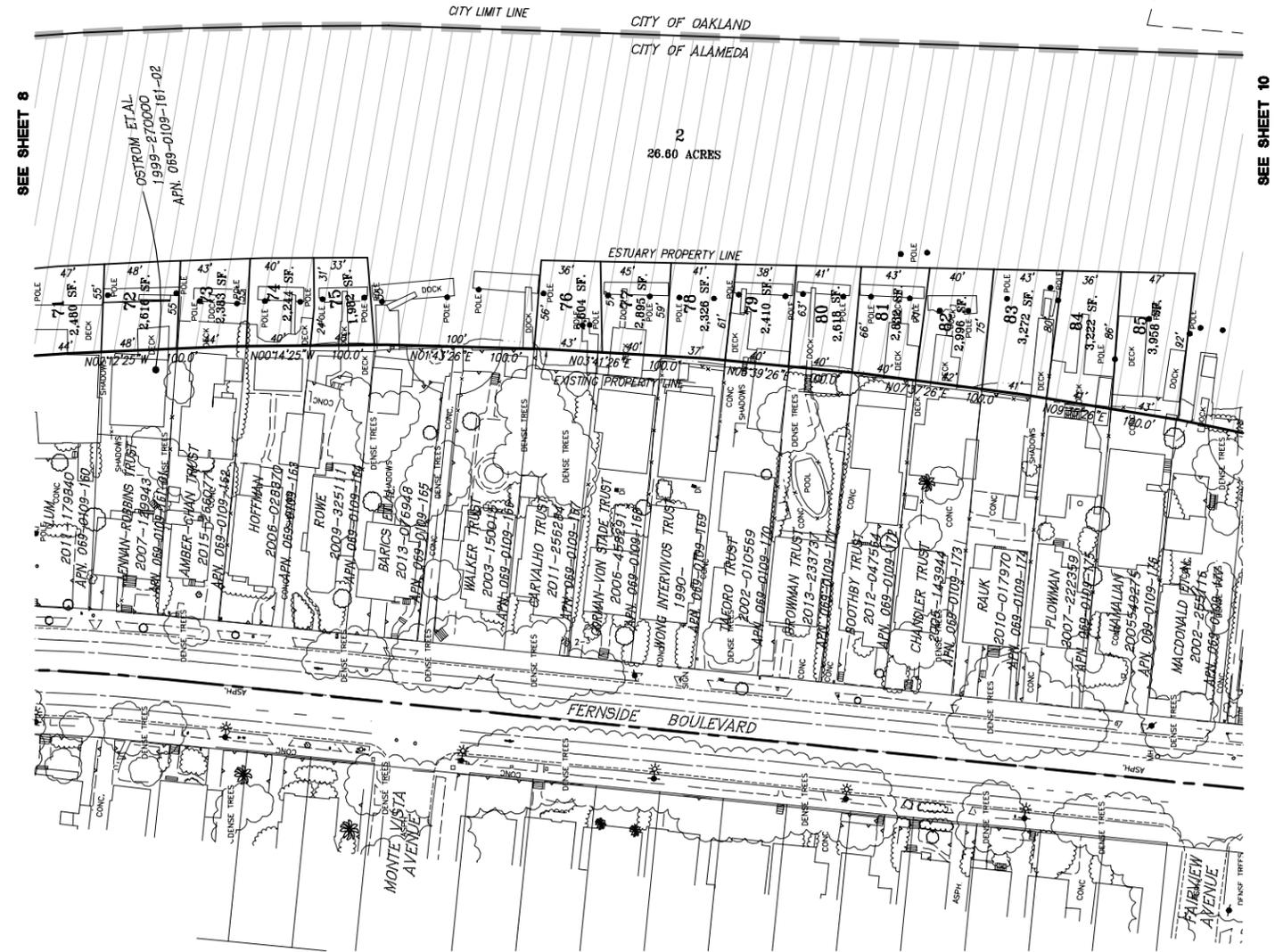
LOTING PLAN
TRACT 8337 - OAKLAND INNER HARBOR
 CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
 FOR: THE CITY OF ALAMEDA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 • PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

G:\102015\151094\CAD FILES\102-PLANNING\TEXT-MAP\151094-8 LOTTING PLAN.DWG 9/8/2016 3:25:25 PM JOHN WIEZDICH



UNSURVEYED
REMAINDER
(AREA 1)



SEE SHEET 8

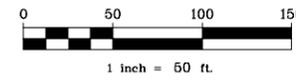
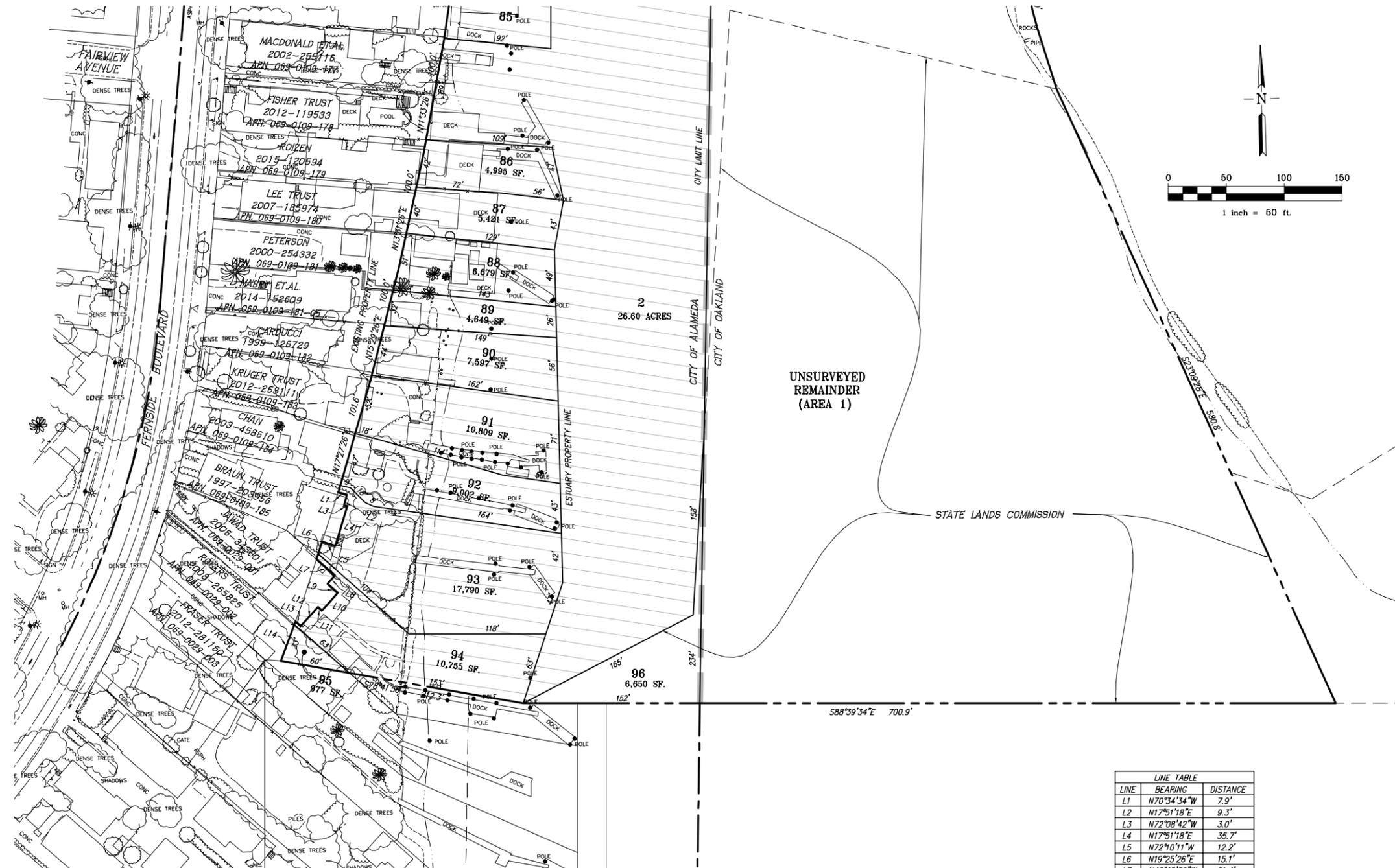
SEE SHEET 10

LOTTING PLAN
TRACT 8337 - OAKLAND INNER HARBOR
 CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
 FOR: THE CITY OF ALAMEDA

G:\MAPS\151094\CAD FILES\02-PLANNING\TEXT-MAP\151094-9 LOTTING PLAN.DWG 9/8/2016 3:27:29 PM JOHN KNEZOVICH

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SEE SHEET 9



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N70°34'34"W	7.9'
L2	N17°51'18"E	9.3'
L3	N72°08'42"W	3.0'
L4	N17°51'18"E	35.7'
L5	N72°10'11"W	12.2'
L6	N19°25'26"E	15.1'
L7	N46°45'59"W	21.4'
L8	N43°14'01"E	9.5'
L9	N46°45'59"W	11.9'
L10	N43°14'01"E	20.5'
L11	N46°45'59"W	4.9'
L12	N43°14'01"E	22.1'
L13	N44°58'02"W	6.2'
L14	N21°23'26"E	35.7'

LOTING PLAN
TRACT 8337 - OAKLAND INNER HARBOR
 CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA
 FOR: THE CITY OF ALAMEDA

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

G:\LAB2015\151094\CAD FILES\02-PLANNING\TEXT-MAP\151094-10 LOTTING PLAN.DWG 9/8/2016 3:29:23 PM JOHN KNEZOVICH

EXHIBIT B
Hazardous Substances

DRAFT

Hazardous Substances Stored, Released, or Disposed of and Remediation Actions Taken:

The following table documents the hazardous substances known to have been stored or released on the property, and the remedial actions taken.

Property Description	ECP Condition Category	Remedial Actions
2235 & 2441 Clement Ave	4	Soils removal for metals impacts to soil. All activities are completed and the RWQCB has closed the site, per RWQCB Order R2-2014-0026 dated June 11, 2014.
2301 – 2337 Blanding Ave	2	Petroleum produce contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
2421 Blanding Ave	4	Metals contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
<p>The information contained in this table is required under the authority of regulation promulgated under section 120(h) of the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA or “Superfund”) 42 U.S.C. 9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance’s CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 C.F.R. Part 373.</p>		

FINDING OF SUITABILITY TO TRANSFER OAKLAND INNER HARBOR TIDAL CANAL (OIHTC)

**CITY OF ALAMEDA AND EAST BAY REGIONAL PARK DISTRICT
ALAMEDA COUNTY, CALIFORNIA**

**Tract A100L - license - 0.00 acres
Tract Prior 43 - fee - 86.50 acres
Tract A101E - easement - 0.00 acres**



Source: Esri, DigitalGlobe



**U.S. Army Corps of Engineers
San Francisco District
August 2016**

TABLE OF CONTENTS

1. Purpose
2. Property Description
3. Environmental Documentation
4. Environmental Condition of Property
 - 4.1. Environmental Remediation Sites
 - 4.2. Storage, Release, or Disposal of Hazardous Substances
 - 4.3. Petroleum and Petroleum Products
 - 4.3.1. Underground and Above-ground Storage Tanks (UST/AST)
 - 4.3.2. Non-UST/AST Storage, Release, or Disposal of Petroleum Products
 - 4.4. Polychlorinated Biphenyls (PCB)
 - 4.5. Asbestos
 - 4.6. Lead-Based Paint (LBP)
 - 4.7. Radiological Materials
 - 4.8. Radon
 - 4.9. Munitions and Explosives of Concern (MEC)
 - 4.10. Other Property Conditions
5. Adjacent Property Conditions
6. Environmental Remediation Agreements
7. Regulatory/Public Coordination
8. National Environmental Policy Act (NEPA) Compliance – EA and FONSI
9. Finding of Suitability to Transfer

Enclosures

- Encl 1 Site Map of Property
- Encl 2 Description of Property
- Encl 3 Adjacent Property
- Encl 4 Rescission of Water Board Order
- Encl 5 CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions
- Encl 6 FONSI and Environmental Assessment (EA)
- Encl 7 Responsiveness Summary

**FINDING OF SUITABILITY TO TRANSFER
Oakland Inner Harbor Tidal Canal
City of Alameda and East Bay Regional Park District
Alameda County, California
August 2016**

1. PURPOSE

The purpose of this Finding Of Suitability To Transfer (FOST) is to document the environmental suitability of the Oakland Inner Harbor Tidal Canal (OIHTC) for transfer consistent with Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(h) and Department of Defense (DOD) policy. In addition, the FOST includes the CERCLA Notice, Covenant, and Access Provisions and other Deed Provisions.

The properties to be transferred (hereinafter, “the property”) are the southwest section of the canal from the centerline of the canal to the surveyed boundary within the City of Alameda (hereinafter, “Alameda”) to Alameda; and the northeast section of the canal from the centerline of the canal to the surveyed boundary within the City of Oakland (hereinafter, “Oakland”) to the East Bay Regional Park District (EBRPD).

2. PROPERTY DESCRIPTION

The property consists of approximately 1.8 miles of canal connecting the Oakland Inner Harbor just west of the Park Street Bridge to San Leandro Bay. There are no Army structures located on the property. Privately-owned floating docks and moorings extend from adjacent commercial and residential properties into the canal and some of the adjacent properties have additional construction, such as patios and small sheds, supported by pilings, which extend onto the Property. Abandoned pilings are located along both sides of the canal, primarily along the Alameda portion.

There is no documentation that the canal has required government-sponsored maintenance dredging since its completion. In general, tidal flow between San Francisco and San Leandro Bays appears to have been sufficient to prevent excessive sediment buildup within the canal that would impede navigation. As determined by historical photographs, sediment deposition that occurs at the Sausal Creek Outlet is generally kept in check by erosion occurring during seasonal storm events.

Both sides of the canal contain numerous small outlet pipes that drain storm water and overland flow from adjacent properties into the canal. Buried pipelines and conduits also cross the canal.

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the property was made based upon, but not limited to the following documents:

- Environmental Data Resources Corridor Study Report (EDR), Environmental Data Resources, Inc., March 24, 2003.
- Environmental Baseline Study (EBS), USACE, San Francisco District, August 16, 2016.

- Limited Phase II Investigation, Allied Engineering Property, 2421 Blanding Avenue, Alameda, CA, Geologica, September 18, 2014.
- GeoTracker Web-based Database, Accessed August 15, 2016.
- Phase II Environmental Site Assessment, Stone Boatyard, 2517 Blanding Avenue, Alameda, CA, Questa Engineering Corp, November 2004.
- Oakland Tidal Canal Geophysical Survey & Sediment Sampling, Sea Surveyor, Inc., March 2009.
- Order No. R2-2002-0091, Adoption of Site Cleanup Requirements for Cal Steel Coating/US Army Corps of Engineers, SFBRWQCB, September 18, 2002.
- Order No. R2-2014-0026, Rescission of Site Cleanup Requirements (Order No. R2-2002-0091) for Cal Steel Coatings/ US Army Corps of Engineers, SFBRWQCB, June 11, 2014.
- Oakland Inner Harbor Tidal Canal Phase I and II Baseline Study, USACE, Sacramento District, December 2014.

A complete listing of the documents used in evaluating the property can be found in Section 7 of the Environmental Baseline Study dated August 2016. The information provided is the result of a complete search of agency files during the development of the environmental surveys.

4. ENVIRONMENTAL CONDITION OF PROPERTY

The DOD Environmental Condition of Property (ECP) categories for the property are as follows:

- ECP Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).
- ECP Category 2: Areas where only release or disposal of petroleum products has occurred.
- ECP Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred but at concentrations that do not require a removal or remedial response.
- ECP Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

CITY OF ALAMEDA SIDE:

The Alameda portion of the canal has 3 known sites on adjacent parcels that have impacted the OIHTC parcel. One area is petroleum only and would warrant a Category 2. Two locations were impacted by metals and would suggest a Category 4 since all federal actions have been completed. One of these locations has been officially closed out while the responsible party is still working with authorities on the second location.

The few areas where impacts have occurred have been documented and all federal actions have been completed. The overall Environmental Condition of Property has been determined to be a Category 4 and is suitable for disposal for civilian reuse.

CITY OF OAKLAND SIDE:

The Oakland portion of the canal is classified as Category 3 based on adjacent land use (current and historical) and current use of the canal property.

4.1 ENVIRONMENTAL REMEDIATION SITES

The portion of the canal adjacent to the previous Nelson Marine Property, also referred to as Cal Steel Coating, 2235 & 2241 Clement Avenue, CA, was remediated in cooperation with the San Francisco Bay Regional Water Quality Control Board (RWQCB) in late 2013 under Order No. R2-2002-0091, Adoption of Site Cleanup Requirements.

There are currently two adjacent sites undergoing remediation on the Alameda side of the canal. The first property is located at 2301 through 2337 Blanding Avenue and is known as Park Street Landing. Gasoline was detected in groundwater on site which is currently being addressed by Chevron in coordination with Alameda County Environmental Health Services. A draft Corrective Action Plan has been submitted.

The second property, known as Allied Engineering and Production Corporation, is located at 2421 Blanding Avenue, Alameda, CA. The current owner of the adjacent property (Allied Engineering) is in negotiations with the RWQCB to remediate the adjacent property and portions of the Tidal Canal.

4.2 STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES

The following table documents the hazardous substances known to have been stored or released on the property, and the remedial actions taken.

Property Description	ECP Condition Category	Remedial Actions
2235 & 2241 Clement Ave	4	Soils removal for metals impacts to soil. All activities are completed and the RWQCB has closed the site, per RWQCB Order R2-2014-0026 dated June 11, 2014.
2301 – 2337 Blanding Ave	2	Petroleum product contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
2421 Blanding Ave	4	Metals contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
The information contained in this table is required under the authority of regulation promulgated under section 120(h) of the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA or "Superfund") 42 U.S.C. § 9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance's CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substance's CERCLA reportable quantity. See 40 C.F.R. Part 373.		

4.3 PETROLEUM AND PETROLEUM PRODUCTS

4.3.1 Underground and Above-ground Storage Tanks (UST/AST)

- Current UST/AST Sites: There are no underground and/or above-ground petroleum storage tanks (UST/AST) on the property.
- Former UST/AST Sites: There is no evidence that underground and/or above-ground storage tanks have ever been located on the property.

4.3.2 Non-UST/AST Storage, Release, or Disposal of Petroleum Products

The Park Street Landing site located at 2301 through 2337 Blanding Avenue has been identified as a site that released petroleum products which migrated to the federal property. Gasoline was detected in groundwater on the site which is currently being addressed by Chevron in coordination with Alameda County Environmental Health Services. A draft Corrective Action Plan has been submitted.

There is no record that the DOD has ever stored petroleum products on the property. There is no record that a release (defined as 55 gallons or more) has occurred at the site.

The property is a public waterway and is subject to potential contamination from passing vessels and from potential spills resulting from the refueling of craft from privately owned docks that extend into the canal. A refueling station (Park Street Landing) exists to the northwest of the property.

An oil sheen was reported near 3253 Fernside Drive, Alameda, on the California Hazardous Material Incident Report System (CHMIRS) database, Office of Environmental Services (OES) Control Number 01-6074) and a release of 5 gallons of diesel fuel was reported on the CHMIRS database at 3313 Fernside Drive, Alameda. These are the only spills found during a search of the databases which directly affected the canal. Reports of oil spills on adjacent properties are listed in Section 5.

There is also the potential that spills which occur within San Francisco and San Leandro Bays may be deposited as residues along the sides of the canal by tidal action, or from watercraft passing through the canal. Numerous storm water outlets also discharge surface water flows along both sides of the canal

4.4 POLYCHLORINATED BIPHENYLS (PCB)

There is no evidence that PCB-containing equipment is located or was previously located on the property.

4.5 ASBESTOS

There are no known man-made or naturally occurring sources of friable asbestos located on the property. It is possible that some of the older buried underground utility pipes crossing the canal may contain or be coated with asbestos containing material (ACM); however, since they are non-friable, they pose no threat to human health and are not considered part of the property transfer.

4.6 LEAD-BASED PAINT (LBP)

Since no buildings were ever constructed by the Department of Defense on the property, there is no source for Army-related LBP on the site. Although a few of the docks which extend onto the property may be old enough to contain some LBP, they are not considered part of the property and are not a part of the transfer.

4.7 RADIOLOGICAL MATERIALS

There is no evidence that radioactive materials or sources were stored or used on the property.

4.8 RADON

Since no buildings or permanent enclosed structures belonging to the Federal Government, exist on the property, no radon surveys were conducted.

4.9 MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

Based on a review of existing records and available information, there is no evidence that Munitions and Explosives of Concern (MEC) are or ever have been present on the property. In addition, the historical use of the property does not support munitions related activities nor have munitions been discovered on the property. The term "MEC" refers to military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. § 2710(e)(2); or (B) munitions constituents, e.g., Trinitrotoluene (TNT) and Cyclotrimethylenetrinitramine (RDX), as defined in 10 U.S.C. § 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

4.10 OTHER PROPERTY CONDITIONS

There are no other hazardous conditions on the property that present an unacceptable risk to human health and the environment. A Phase I and II Environmental Baseline Study of the property was prepared by USACE, Sacramento District, in December 2014.

5. ADJACENT PROPERTY CONDITIONS

A study of the properties adjacent to the OIHTC was completed by Environmental Data Resources, Inc. (EDR) in March 2003. EDR performed a search of Federal, state and local records contained in 20 different databases for sites within the vicinity of the canal that have reported contamination, have ASTs or USTs containing petroleum products or that have reportable quantities of hazardous materials stored on the property. These properties are discussed in the Phase I and II Environmental Baseline Study prepared by USACE, Sacramento District, in December 2014. Those properties listed in the EDR that are adjacent to the canal are listed in Enclosure 3.

6. ENVIRONMENTAL REMEDIATION AGREEMENTS

The RWQCB issued an Order for Adoption of Site Cleanup Requirements for the property located at 2241 Clement Avenue known as Nelson's Marine. The landowners and/or operators disposed of building debris, soil, paint solids, metallic shavings, grit and sandblasting slag which impacted soil and marine sediment on that portion of the canal adjacent to the Nelson Marine property. In cooperation with the RWQCB, remedial action removed contamination from the Federal Property and the Order was rescinded. A copy of the Rescission Order can be found in Enclosure 4.

The RWQCB has an open site assessment on 2124 Blanding Avenue in the City of Alameda, which currently belongs to Allied Engineering and Production Corporation.

The RWQCB has an open site assessment on 2301 through 2337 Blanding Avenue in the City of Alameda, which is known as Park Street Landing. Gasoline was detected in groundwater on site which is currently being addressed by Chevron in coordination with Alameda County Environmental Health Services. A draft Corrective Action Plan has been submitted.

There are no other environmental remediation orders, tentative orders, or agreements applicable to the property being transferred. The deed will include a provision reserving the Army's right to conduct future remediation activities if necessary (Enclosure 5).

7. REGULATORY/PUBLIC COORDINATION

The RWQCB was notified of the initiation of this FOST. Regulatory /public comments received during the public comment period will be reviewed and incorporated as appropriate. A copy of the regulatory / public comments and the Army Response are included as Enclosures 7 and 8.

8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

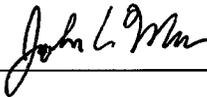
The environmental impacts associated with the proposed transfer of the property were analyzed in an Environmental Assessment dated May 2016, see Enclosure 6. Public comment and review took place in July 2016, see Enclosure 7 for the Responsiveness Summary. A Finding of No Significant Impact was signed in August 2016, see Enclosure 6.

9. FINDING OF SUITABILITY TO TRANSFER

Based on the above information, the USACE concludes that all removal or remedial actions necessary to protect human health and the environment have been taken or are in the process of being taken and the property is transferable under CERCLA section 120(h)(3). In addition, all Department of Defense requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions set forth in the attached Environmental Protection Provisions that shall be included in the deeds for the property. The deeds will also include the CERCLA 120(h)(3) Notice, Covenant, and Access Provisions and Other Deed Provisions.

UNITED STATES OF AMERICA

By: _____



JOHN C. MORROW
Lieutenant Colonel, US Army
District Engineer

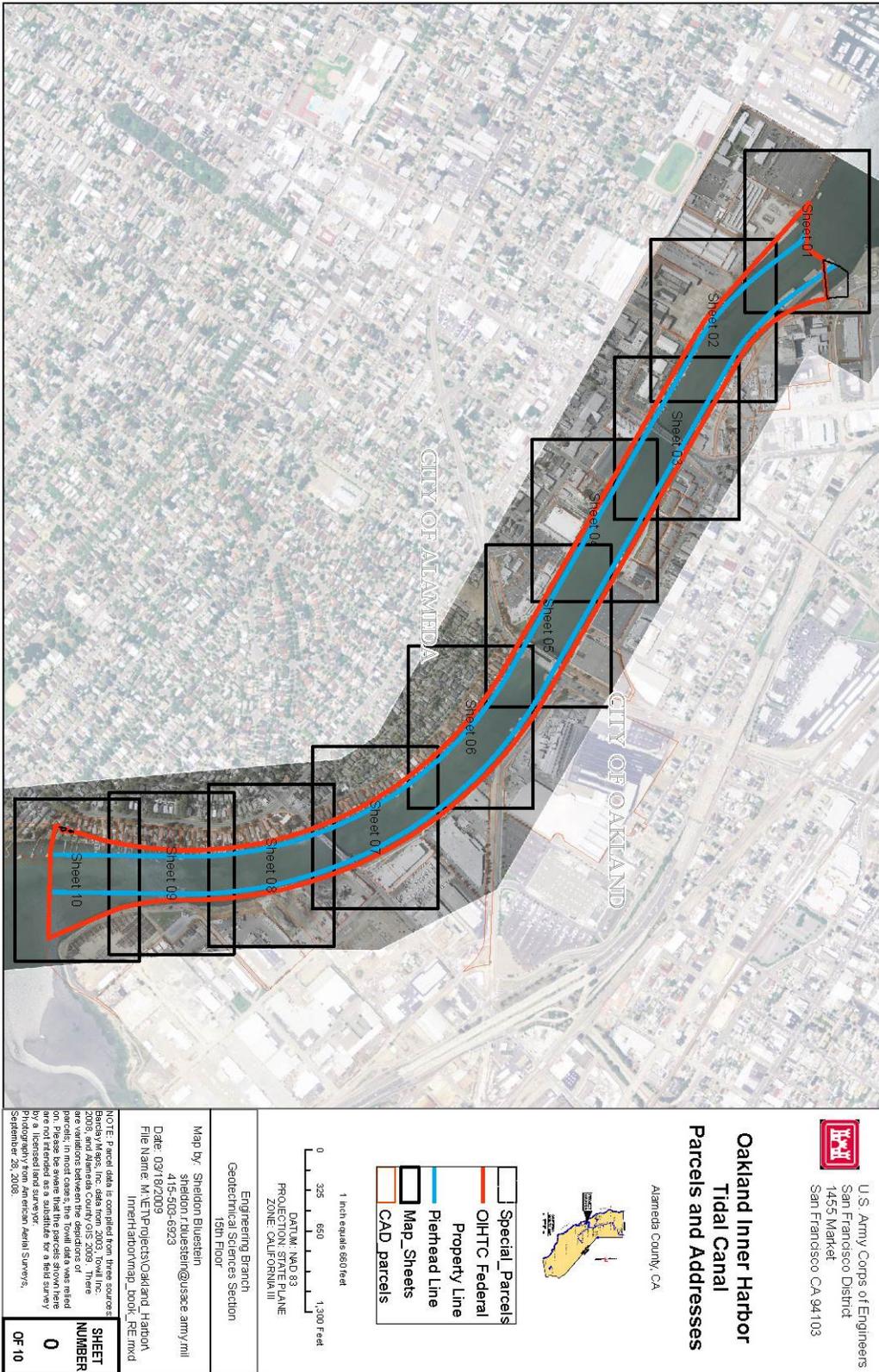
10. ENCLOSURES

- Encl 1 Site Maps of Property
- Encl 2 Description of Property
- Encl 3 Adjacent Property
- Encl 4 Rescission of Tentative Board Order
- Encl 5 CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions
- Encl 6 FONSI and Environmental Assessment (EA)
- Encl 7 Responsiveness Summary

ENCLOSURE 1

SITE MAP

SITE MAP



ENCLOSURE 2
PROPERTY DESCRIPTION

A general description of the property can be found in Section 2 of the main text. Attached here is a copy of the legal description that is currently on file in the USACE Offices.

OAKLAND INNER HARBOR TIDAL CANAL
LEGAL DESCRIPTION

Decree No. 3590
Superior Court of Alameda
September 30, 1882

Beginning at a stake near the junction of Brickyard Slough and San Leandro estuary or bay, on the westerly side of said slough, and south 80° east, 15 feet distant from tide-land stake No. 224, shown on a map entitled Map No. 2 of Salt Marsh and Tide Lands, situate in the county of Alameda, State of California, prepared by order of the Board of Tide Land Commissioners in 1871, and which map and the field notes thereof are on file in the office of the State Board of Tide land Commissioners; thence north 20° 03' east, 54 04-100 feet into land claimed by J. D. Farwell; thence north 18° 05' east, 100 feet, to and across the boundary between the land claimed by J. D. Farwell and the land claimed by H. Gibbons, and into the land claimed by said H. Gibbons; thence north 16° 07' east, 100 feet; thence north 14° 09' east, 100 feet; thence north 12° 11' east, 100 feet; thence north 10° 13' east, 100 feet; thence north 8° 15' east, 100 feet; thence north 6° 17' east, 100 feet; thence north 4° 19' east, 100 feet; thence north 2° 21' east, 100 feet; thence north 0° 23' east, 100 feet; thence north 1° 35' west, 100 feet; thence north 3° 33' west, 100 feet; thence north 5° 31' west, 100 feet; thence north 7° 29' west, 100 feet; thence north 9° 27' west, 100 feet; thence north 11° 25' west, 100 feet; thence north 13° 23' west, 100 feet; thence north 15° 21' west, 100 feet; thence north 17° 19' west, 100 feet; thence north 19° 17' west, 100 feet; thence north 21° 15' west, 100 feet, to and across the northwesterly line of said land claimed by H. Gibbons, and across High Street and into land claimed by A. A. Cohen; thence north 23° 13' west, 100 feet; thence north 25° 11' west, 100 feet; thence north 27° 09' west, 100 feet; thence north 29° 07' west, 100 feet; thence north 31° 05' west, 100 feet; thence north 33° 03' west, 100 feet; thence north 35° 01' west, 100 feet; thence north 36° 59' west, 100 feet, to and across the boundary between the said land claimed by A. A. Cohen and the land claimed by P. Sather, and into land claimed by P. Sather; thence north 38° 57' west, 100 feet; thence north 40° 55' west, 100 feet; thence north 42° 53' west, 100 feet, to and across the boundary between the said land claimed by P. Sather and land claimed by A. A. Cohen, and into land claimed by A. A. Cohen; thence north 44° 51' west, 100 feet; thence north 46° 49' west, 100 feet; thence north 48° 47' west, 100 feet; thence north 50° 45' west, 100 feet; thence north 52° 43' west, 100 feet; thence north 54° 41' west, 100 feet, to and across the boundary between the said land claimed by A. A. Cohen and into land claimed by P. Sather; thence north 56° 39' west 100 feet; thence north 58° 37' west, 100 feet, to and across the boundary between the said land claimed by P. Sather and into land claimed by the Central Pacific Railroad Company; thence north 60° 35' west, 100 feet, to and across the boundary between the said land claimed by the Central Pacific Railroad Company and into Washington avenue; thence north 61° 34' west, 3106 58-100 feet, across Washington avenue, to and along the boundary between the land claimed by Valdez and Glascock and Washington avenue, to and across Park Avenue, to and across the boundary between said Park avenue and land claimed by G. G. Briggs, across said land claimed by G. G. Briggs to and across boundary between said land claimed by G. G. Briggs and land claimed by the Oakland Water Front Company, B. S. Alexander, B. S. Brooks, A. A. Cohen, Caroline E. Chipman, Eli Corwin, H. W. Carpentier, O. Eldridge, J. D. Farwell, Mary A. Fitch, E. Forge, Hayes and Caperton, J. G. Kellogg, Annis Merrill, G. H. Mendell, E. B. Mastick, Nathan Porter, Mrs. Julia Page, C. S. Stewart and H. M. Whitney (undivided interests), across the land claimed by the Oakland Water Front Company, B. S. Alexander, B. S. Brooks, A. A. Cohen, Caroline E. Chipman, Eli Corwin, H. W. Carpentier, O. Eldridge, J. D. Farwell, Mary A. Fitch, E. Forge, Hayes and Caperton, J. G.

Kellogg, Annis Merrill, G. H. Mendell, E. B. Mastick, Nathan Porter, Mrs. Julia Page, C. S. Stewart and H. M. Whitney (undivided interests), to and across the boundary between the said last named tract of land and the land claimed by Meinicke, Baum Muecke, Janssen, and Roeding, across the said land claimed by Meinicke, Baum, Muecke, Janssen, and Roeding to and across the boundary between the said land claimed by Meinicke, Baum, Muecke, Janssen, and Roeding, and the land claimed by T. A. Smith, across the said land claimed by T. A. Smith, to and across the boundary between the said land claimed by T. A. Smith and the land claimed by the Oakland Water Front Company, B. S. Alexander, B. S. Brooks, A. A. Cohen, Caroline E. Chipman, Eli Corwin, H. W. Carpentier, O. Eldridge, J. D. Farwell, Mary A. Fitch, E. Forge, Hayes and Caperton, J. G. Kellogg, Annis Merrill, G. H. Mendell, E. B. Mastick, Nathan Porter, Mrs. Julia Page, C. S. Stewart and H. M. Whitney (undivided interests), into the land claimed by the Oakland Water Front Company, B. S. Alexander, B. S. Brooks, A. A. Cohen, Caroline E. Chipman, Eli Corwin, H. W. Carpentier, O. Eldridge, J. D. Farwell, Mary A. Fitch, E. Forge, Hayes and Caperton, J. G. Kellogg, Annis Merrill, G. H. Mendell, E. B. Mastick, Nathan Porter, Mrs. Julia Page, C. S. Stewart and H. M. Whitney (undivided interests); thence north 57° 34' west, 100 06-100 feet; thence north 53° 33' west, 100 06-100 feet; thence north 49° 33' west, 1157 73-100 feet to a post marked U.S.E. on the edge of the marsh land at the head of San Antonio estuary, and which post is north 88° 19' west, 366 40-100 feet distant from the tide land stake No. 424, shown on a map entitled Map No. 3 of Salt Marsh and Tide Land, situate in the county of Alameda, State of California, prepared by order of the Board of Tide Land Commissioners in 1872, and which map and the field notes thereof are on file in the office of the State Board of Tide Land Commissioners; thence south 88° 19' east, 366 40-100 feet along the edge of the marsh land at the head of San Antonio estuary to tide land stake No. 424, above described; thence north 32° 25' east, 158 60-100 feet, continuing along the edge of the said marsh land; thence north 22° 05' east, 145 feet, continuing along the edge of the said marsh land; thence north 33° 48' east, 79 10-100 feet, continuing along the edge of said marsh land; thence north 88° 45' east, 193 67-100 feet, continuing along the edge of said marsh land; thence south 3° 26' east, 64 15-100 feet, leaving the edge of said marsh land at the head of San Antonio estuary, and into the land claimed by the Oakland Water Front Company, B. S. Alexander, B. S. Brooks, A. A. Cohen, Caroline E. Chipman, Eli Corwin, H. W. Carpentier, O. Eldridge, J. D. Farwell, Mary A. Fitch, E. Forge, Hayes and Caperton, J. G. Kellogg, Annis Merrill, G. H. Mendell, E. B. Mastick, Nathan Porter, Mrs. Julia Page, C. S. Stewart and H. M. Whitney (undivided interests); thence south 8° 41' east, 100 feet; thence south 14° 15' east, 100 feet; thence south 19° 49' east, 100 feet; thence south 25° 23' east, 100 feet; thence south 30° 57' east, 100 feet; thence south 36° 31' east, 100 feet; thence south 42° 05' east, 100 feet; thence south 47° 39' east, 100 feet; thence south 53° 13' east, 100 feet; thence south 58° 47' east, 100 feet, to a stake on the boundary between the said land claimed by the Oakland Water Front Company, B. S. Alexander, B. S. Brooks, A. A. Cohen, Caroline E. Chipman, Eli Corwin, H. W. Carpentier, O. Eldridge, J. D. Farwell, Mary A. Fitch, E. Forge, Hayes and Caperton, J. G. Kellogg, Annis Merrill, G. H. Mendell, E. B. Mastick, Nathan Porter, Mrs. Julia Page, C. S. Stewart and H. M. Whitney (undivided interests), and the land claimed by A. Ford; thence south 61° 34' east, 3113 37-100 feet, across said land claimed by A. Ford, to and across the boundary between the said land claimed by A. Ford and land claimed by G. G. Briggs, into the land claimed by G. G. Briggs, across said land claimed by G. G. Briggs, into the land claimed by G. G. Briggs, to and across the boundary between the said land claimed by G. G. Briggs and Park avenue, across Park avenue to and across the boundary between Park avenue and the land claimed by Valdez and Glascock into and across the said land claimed by Valdez and Glascock to and across the boundary between the said land claimed by Valdez and Glascock and Fruit Vale avenue, across Fruit Vale avenue to and across the boundary between Fruit Vale avenue and the land claimed by P. Sather, into the said land claimed by P. Sather; thence south 59° 36' east, 113 75-100 feet; thence south 57° 38' east, 113 75-100 feet; thence south 55° 40' east, 113 75-100 feet; thence south 53° 42' east, 113 75-100 feet; thence south 51° 44' east, 113 75-100 feet, to and across the boundary between said land claimed by P. Sather and Washington avenue, into Washington avenue; thence south 49° 46' east, 113 75-100 feet to and across the boundary between Washington avenue and the land claimed by the Central Pacific Railroad Company into the said land claimed by the Central Pacific Railroad Company; thence south 47° 48' east, 113 75-100

feet, to and across the boundary between the said land claimed by the Central Pacific Railroad Company and the land claimed by P. Sather, and into the land claimed by P. Sather; thence south 45° 50' east 113 75-100 feet; thence south 43° 52' east, 113 75-100 feet; thence south 41° 54' east, 113 75-100 feet; thence south 39° 56' east, 113 75-100 feet; thence south 37° 58' east, 113 75-100 feet; thence 35° 00' east, 113 75-100 feet; thence south 33° 02' east, 113 75-100 feet; thence south 31° 04' east, 113 75-100 feet; thence south 29° 06' east, 113 75-100 feet; thence south 27° 08' east, 113 75-100 feet; thence south 25° 10' east 113 75-100 feet, to and across the boundary between the said land claimed by P. Sather and High street, and into High street; thence south 23° 12' east, 113 75-100 feet, to and across the boundary between High street and the land claimed by J. D. Farwell, and into the said land claimed by J. D. Farwell; thence south 21° 14', east 113 75-100 feet; thence south 19° 16' east, 113 75-100 feet; thence south 17° 18' east, 113 75-100 feet; thence south 15° 20' east, 113 75-100 feet; thence south 13° 22' east, 113 75-100 feet, to and across the boundary between the said land claimed by J. D. Farwell and the land claimed by H. Gibbons, into the said land claimed by H. Gibbons; thence south 11° 24' east, 113 75-100 feet, to and across the boundary between the said land claimed by H. Gibbons and land claimed by J. D. Farwell, and into the land claimed by J. D. Farwell; thence south 9° 26' east, 113 75-100 feet; thence south 7° 28' east, 113 75-100 feet; thence south 5° 30' east, 113 75-100 feet, to and across the boundary between the said land claimed by J. D. Farwell and the land claimed by H. Gibbons, and into the said land claimed by H. Gibbons; thence south 3° 32' east, 113 75-100 feet; thence south 1° 34' east, 113 75-100 feet, to and across the boundary between the said land claimed by H. Gibbons and land claimed by R. Simpson, and into the said land claimed by R. Simpson; thence south 0° 24' west, 56 87-100 feet; thence south 1° 11' east, 100 feet; thence south 4° 21' east, 100 feet; thence south 7° 31' east, 100 feet; thence south 10° 41' east, 100 feet; thence south 13° 51' east, 100 feet; thence south 17° 54' east, 49 65-100 feet, to tide land stake No. 220, shown on a map entitled Map No. 2 of Salt Marsh and Tide Lands, situate in the county of Alameda, State of California, prepared by order of the Board Of Tide Land Commissioners in 1871, and which map, and the field notes thereof, are on file in the office of the State Board of Tide Land Commissioners; thence south 24° 30' east, 580 83-100 feet along the boundary between land claimed by R. Simson and land claimed by M. Crooks, and across the said land claimed by M. Crooks to a point on a mud flat on the northwesterly shore of San Leandro estuary or bay; thence west, 700 98-100 feet along the southern boundary of the said land claimed by M. Crooks, to a corner common to the said land claimed by M. Crooks and land claimed by R. Simson; thence north 80° 00' west, 212 23-100 feet along the southern boundary of said land claimed by R. Simson, through the corner common to the said land claimed by R. Simson and land claimed by J. D. Farwell, along the southern boundary of the said land claimed by J. D. Farwell, to the place of beginning.

EXCEPTION THEREFROM, the .97 acre, more or less, reported excess 22 September 1982 (SPK-82-1A) 9-D-CA-1208.

Also noted in the files that there were 0.03 acres quit claimed to August Nolthenius on 26 January 1944.

ENCLOSURE 3
ADJACENT PROPERTY

ADJACENT PROPERTIES

The USACE Sacramento District commissioned Environmental Data Resources, Inc. to perform a search of Federal, State and Local environmental databases for the Oakland Inner Harbor Tidal Canal Phase I and II Environmental Baseline Study for listed properties within a one-fourth mile radius from the center of the canal. The results were published under the title of "The EDR Corridor Study Report" dated March 24, 2003. The results of the study is discussed in the USACE Phase I and II Environmental Baseline and is included in it's entirety as an attachment in that document. The information in this section is from the EDR Corridor Study Report but is limited to those properties considered to be located adjacent to the canal.

The number in parenthesis preceding each property address references the entry number in the EDR Corridor Study Report. The number in parentheses following the database where the site was listed is the EPA Identification Number for that site. The names of the owners given below are the owners or occupants of the property at the time the property was listed in the database(s) and may or may not be the current owners or occupants.

A property may become listed for many reasons including registration of above or below ground storage tanks, storage of hazardous or toxic materials in reportable quantities, generation of hazardous or toxic wastes in the course of business and/or having had a spill or release on the property. Just because a property is listed does not necessarily mean that the property poses an environmental problem.

When determining which properties were actually adjacent to the canal, it is possible that a few of the properties included below may not actually be adjacent to the canal. Whenever there were questions about whether or not a property should be included, it was decided to err on the conservative side and include the property.

LIST OF ACRONYMS / GLOSSARY OF TERMS

AIRS/AFS

Aerometric Information Retrieval System / AIRS Facility Subsystem database. Information on air releases is contained in the Aerometric Information Retrieval System (AIRS), a computer-based repository for information about air pollution in the United States. This information comes from source reports submitted by various stationary sources of air pollution, such as electric power plants, steel mills, factories, and universities, and provides information about the air pollutants they produce. In AIRS, these sources are known as facilities, and the part of AIRS associated with data about sources is called the AIRS Facility Subsystem, or AFS. The information in AFS is used by the states to prepare State Implementation Plans, to track the compliance status of point sources with various regulatory programs, and to report air emissions estimates for pollutants regulated under the [Clean Air Act](#).

AST

Aboveground Storage Tank. The Aboveground Storage Tank database contains registered ASTs. The data comes from the State Water Resources Control Board's Hazardous Storage Container Database.

BRS

The Biennial Reporting System is one of EPA's primary tools for tracking the generation, shipment, and receipt of hazardous waste. It contains information from the Hazardous Waste Reports that must be filed every two years under the RCRA program. RCRA (the Resource Conservation and Recovery Act) is the Federal statute that regulates the generation, treatment, storage, disposal, or recycling of solid and hazardous waste. Facilities must report their activities involving hazardous waste to BRS if they fulfill one of two criteria: (1) they are a Large Quantity Generator (LQG) of waste, or (2) they have treated, stored, or disposed (TSD) of RCRA hazardous waste on site in units subject to RCRA permitting requirements.

Not all hazardous waste is reported within BRS. Some waste that might otherwise be considered hazardous is exempted from regulation within RCRA as part of the original legislation. Some waste treatment units, in particular wastewater treatment units, are not regulated under RCRA but instead under other environmental statutes. However, BRS appears to be the best U.S. hazardous waste tracking database available.

CA FID / CA FID UST

The California Facility Inventory Database contains active and inactive underground storage tank locations. The source of the database is the State Water Resource Control Board.

CA WDS

California Waste Discharge System. General Waste Discharge Requirement (WDR) adopted by the State Water Resources Control Board of California (SWRCB) on May 2, 2006. The goal of the WDR is to provide a consistent statewide approach for reducing Sanitary Sewer Overflows (SSOs). The WDR outlines these requirements for all publicly owned sanitary sewer collection systems in California with more than one mile of sewer pipe. The database used to track this information is the CA WDS. For additional information visit the California EPA's website at www.waterboards.ca.gov/sso/.

CERCLIS

Comprehensive Environmental Response, Compensation, and Liability Information System. CERCLIS is the Superfund (CERCLA) database that is used to support management in all phases of the Superfund program. The system contains information

on all aspects of hazardous waste sites, including an inventory of sites, planned and actual site activities, and financial information. For more information on CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) go to <http://www.epa.gov/superfund/action/law/cercla.htm> . For additional information concerning the CERCLIS database go to [CERCLIS Database | Superfund Information Systems | US EPA](#)

CHMIRS

California Hazardous Material Incident Report System database contains information on reported hazardous material incidents such as accidental releases or spills. The database is maintained by the Office of Emergency Services (OES).

CLEANERS / DRYCLEANERS

Usually referred to as CLEANERS, this database is a list of drycleaner related facilities that have EPA identification numbers. These are facilities with certain SIC (Standard Industrial Classification) Codes such as power laundries, family and commercial; garment pressing and cleaners' agents; linen supply; coin-operated laundries and cleaning; dry cleaning plants except rugs; carpet and upholstery cleaning; industrial launderers; and laundry and garment services.

CORTESE

This database identifies public drinking water wells with detectable levels of contamination, hazardous substance sites selected for remedial action, sites with known toxic material identified through the abandoned site assessment program, sites with USTS having a reportable release and all solid waste disposal facilities from which there is known migration. The source is the California Environmental Protection Agency / Office of Emergency Information.

EPA / U.S. EPA

United States Environmental Protection Agency.

ERNS

The Emergency Response Notification System records and stores information on reported releases of oil and hazardous substances. The source of this database is the U.S. EPA

FINDS

The Facility Index System contains both facility information and "pointers" to other sources of information that contain more detail. These other sources of information include:

RCRIS

PCS (Permit Compliance System)

AIRS (Aeromatic Information Retrieval System)

FATES (FIFRA [Federal Insecticide Fungicide Rodenticide Act] and TSCA [Toxic Substances Control Act] Enforcement System)

FTTS (FIFRA/TSCA Tracking System)

CERCLIS

DOCKET (Enforcement Docket used to manage and track information on civil judicial enforcement cases for all environmental statutes)

FURS (Federal Underground Injection Control)

FRDS (Federal Reporting Data System)

SIA (Surface Impoundments)

CICS (TSCA Chemical in Commerce Information System)

PADS

RCRA-J (medical waste transporters/disposers)

TRIS
TSCA

The source of this database is the U.S. EPA/NTIS.

FRS

The Facility Registry System is a centrally managed database that identifies facilities, sites or places subject to environmental regulations or of environmental interest. FRS creates high-quality, accurate, and authoritative facility identification records through rigorous verification and management procedures that incorporate information from program national systems, state master facility records, data collected from EPA's Central Data Exchange registrations and data management personnel. The FRS provides Internet access to a single integrated source of comprehensive (air, water, and waste) environmental information about facilities, sites or places. For additional information go to [http://iaspub.epa.gov/edr/frs\\$.startup](http://iaspub.epa.gov/edr/frs$.startup)
HAZNET / CA HAZNET

This database contains data that is extracted from the copies of hazardous waste manifests received each year by the DTSC. The annual volume of manifests is typically 700,000 to 1,000,000 annually, representing approximately 350,000 to 500,000 shipments. Data from non-California manifests and continuation sheets are not included at the present time. Data are from the manifests submitted without correction, and therefore may contain some invalid values for data elements such as generator identification, TSD (Treatment, Storage and Disposal) identification, waste category, and disposal method. The source agency is the Department of Toxic Substance Control (DTSC).

HIST UST / HISTORICAL UST

Historical Underground Storage Tank database.

HMIRS

The Hazardous Materials Incident Report System contains hazardous material spill incidents reported to the Department of Transportation. The source of this database is the U.S.EPA

LUST

Leaking Underground Storage Tanks. The LUST database contains an inventory of incidence reports concerning leaking underground storage tanks. The data come from the State Water Resources Control Board Leaking Underground Storage Tank Information System.

mg/l milligrams per liter

MTBE

MTBE (methyl tertiary-butyl ether) is a chemical compound that is manufactured by the chemical reaction of methanol and isobutylene. MTBE is produced in very large quantities (over 200,000 barrels per day in the U.S. in 1999) and is almost exclusively used as a fuel additive in gasoline. It is one of a group of chemicals commonly known as "oxygenates" because they raise the oxygen content of gasoline. At room temperature, MTBE is a volatile, flammable and colorless liquid that dissolves rather easily in water. MTBE has been used in U.S. gasoline at low levels since 1979 to replace lead as an octane enhancer (helps prevent the engine from "knocking"). Since 1992, MTBE has been used at higher concentrations in some gasoline to fulfill the oxygenate requirements set by Congress in the 1990 Clean Air Act Amendments.

NCDB

The National Compliance Data Base system (NCDB) tracks regional compliance and enforcement activity for the National Pesticides and Toxic Substances Compliance and Enforcement program. The system tracks compliance monitoring and enforcement activities from the time an inspector conducts an inspection until the inspector closes the case or settles any resulting enforcement action(s). NCDB is the national repository of data from the regional and Headquarters FIFRA/TSCA Tracking Systems (FTTS). Most of the data collected in FTTS is transferred to NCDB to support national program management and accomplishment reporting for the following programs:

- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Toxic Substances Control Act (TSCA)
- Emergency Planning and Right-to-Know Act, Section 313 (EPCRA)
- Asbestos Hazard Emergency Response (AHERA)

NET

National Emissions Trends. The National Air Pollutant Emission Trends Report(s) presents the estimate of national emissions of the criteria air pollutants. The emissions of each pollutant are estimated for many different source categories, which collectively account for all anthropogenic emissions. Annual reports present the total emissions from all 50 states and serve as a measure of our nation's progress in reducing air pollution emissions as a result of mandatory and voluntary controls and of continuous changes in national activity.

NOTIFY 65

Notify 65 records contain facility notification about any release that could impact drinking water and thereby expose the public to a potential health risk. The data come from the State Water Resources Control Board's Proposition 65 database.

NTI

National Toxics Invntory. EPA's Emission Factor and Inventory Group prepares a national database of air emissions information with input from numerous State and local air agencies, from tribes, and from industry. This database contains information on stationary and mobile sources that emit criteria air pollutants and their precursors, as well as hazardous air pollutants (HAPs). The database includes estimates of annual emissions, by source, of air pollutants in each area of the country, on an annual basis.

OES Office of Emergency Services

PCBs

Polychlorinated biphenyls are mixtures of up to 209 individual chlorinated compounds (known as congeners). There are no known natural sources of PCBs. PCBs are either oily liquids or solids that are colorless to light yellow. Some PCBs can exist as a vapor in air. PCBs have no known smell or taste. Many commercial PCB mixtures are known in the U.S. by the trade name Aroclor.

PCBs have been used as coolants and lubricants in transformers, capacitors, and other electrical equipment because they don't burn easily and are good insulators. The manufacture of PCBs was stopped in the U.S. in 1977 because of evidence they build up in the environment and can cause harmful health effects. Products made before 1977 that may contain PCBs include old fluorescent lighting fixtures and electrical devices containing PCB capacitors, and hydraulic oils.

PCS

The Permit Compliance System database provides information on companies which have been issued permits to discharge waste water into rivers. You can review information on

when a permit was issued and expires, how much the company is permitted to discharge, and the actual monitoring data showing what the company has discharged. The [Water Discharge Permits Query](#) allows you to retrieve preselected data from the PCS database in Envirofacts. The site also contains information on related [laws and regulations](#).

RCRAINFO

[RCRAInfo](#) provides access to hazardous waste data supporting the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments (HSWA) of 1984.

RCRIS

Resource Conservation and Recovery Act database, which includes selected information on sites that generate, store, treat, or dispose of hazardous waste as defined by the Act. The source of this data base is the U.S. EPA

RCRIS-LQG

That part of the Resource Conservation and Recovery Act database that deals with Large Quantity Generators. The definition of Large Quantity Generator is complex, but a simplified version is any site that generates more than 2,200 lbs of RCRA waste in a single month, accumulates more than 2.2 lbs of RCRA acute hazardous waste in any single month, or accumulates more than 220 lbs of spill cleanup material contaminated with RCRA acute hazardous waste in any month.

RCRIS-SQG

That part of the Resource Conservation and Recovery Act database that deals with Small Quantity Generators.

RWQCB

[Regional Water Quality Control Board](#).

SLIC

[Spills, Leaks, Investigation and Cleanup](#) database, also referred to as CA SLIC. SLIC Region information comes from the California Regional Water Quality Control Board.

TRIS

The [Toxic Chemical Release Inventory System](#) identifies facilities that release toxic chemicals to the air, water, and/or land in reportable quantities under SARA Title III, Section 313. The source of this database is the U.S.EPA.

TSCA

The [Toxic Substances Control Act](#) identifies manufacturers and importers of chemical substances included on the TSCA Chemical Substance Inventory list. It includes data on the production volume of these substances by plant site. The U.S. EPA has no current plan to update and/or re-issue this database.

USACE

[United States Army Corps of Engineers](#)

UST

[Underground Storage Tank](#). The UST database contains registered USTs. USTs are regulated under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The data comes from the State Water Resources Control Board's Hazardous Substance Storage Container database.

ADJACENT PROPERTIES WITHIN THE CITY OF ALAMEDA:

- (23) US Navy-Marine Corp Reserve Center
2144 Clement Ave.
Alameda, CA 94501

This property is listed under HAZNET (S104582552) for storage of organic solids; off-specification, aged, or surplus inorganics; other inorganic solid waste; and other empty containers of 30 gallons or more. There are no indications of any pending actions or releases to the environment.

- (40) Dutra Construction Co. Inc.
2199 Clement Ave.
Alameda, CA 94501

This property is listed under RICRIS-SQG (1000597021), FINDS (CAD983610155) and HAZNET as a Small Quantity Generator with unspecified organic liquids and other organic solids.

- (40) Smith-Rice Company Yard
2199 Clement Ave.
Alameda, CA 94501

This property is listed under HISTORICAL UST as having a 6,000-gal. tank containing unleaded fuel. It is also listed under HAZNET and CA FID UST for unspecified oil-containing wastes.

- (43) Park Street Landing
2301 Blanding Ave.
Alameda, CA 94501

This property is listed under CORTESE (S102434979) and by LUST, Alameda County, as having a storage tank.

- (44) S. K. Auto Sales
2241 Clement
Alameda, CA 94501

This property is listed under HAZNET (S1039858510) for having aqueous solutions with less than 10% total organic residues on site.

- (44) Nelson, Harrold
2241 Clement St.
Alameda, CA 94501

This property is listed under HAZNET (S103643232) for having asbestos-containing waste on the property.

- (44) Engine Works
2241 Clement
Alameda, CA 94501

This property is listed under HAZNET (S103643231) for aqueous solutions with less than 10% total organic residues.

- (44) Clement Avenue Project
2241 Clement Ave.
Alameda, CA 94501

This property is listed under the LUST Program (S103576438) as having waste oil contaminated soil discovered during a tank removal. The database states that the contaminated soil was excavated under the Local Oversight Program (Case number 1325) and disposed of in an appropriate manner. The case is closed.

- (44) 2241 Clement Ave,
Alameda, CA 94501

This property is listed under the LUST Program (S105620077) as Regional Water Board Site Number 1325 (case closed).

- (44) CAL Steel Coating Co.
2241 Clement Ave.
Alameda, CA 94501

This property is listed under HAZNET (S103953968) for having off-specification, aged, or surplus organics. It is also listed under FINDS (1004440532, 110001184673) which includes AIRS/AFS (AIRS Facility System), FRS (Facility Registry System), NET (National Emissions Trends), and NTI (National Toxics Inventory) databases.

- (44) Reliance Sheet & Strip Company
2235 Clement Ave.
Alameda, CA 94501

This property is listed under HISTORICAL UST (U001596158) as having a tank containing regular product on site. The database does not indicate if the tank had been removed.

- (44) Nelson Marine
2229 Clement Ave.
Alameda, CA 94501

This property is listed under HAZNET (S101641239) for metal dust (waste from machining operations); for alkaline solutions containing metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium and zinc); and for photo chemicals / photo processing wastes. The property is also listed under SLIC Region 2 (Facility ID 01S0274) for subsurface chemical pollutants. The property is currently undergoing remediation under a Regional Water Quality Control Board Tentative Board Order.

- (45) Perforce Software Inc.
2320 Blanding
Alameda, CA 94501

This property is listed under HAZNET (S105086098) as having had asbestos-containing waste which was disposed of at an offsite landfill.

- (46) UNKNOWN
2235 Clement Ave.
Alameda, CA

This property is listed under NOTIFY 65 (S100179085) as having had an incident (spill) description 92405. No other information is currently available.

- (51) American Speedy Printing
2327 Blanding Ave. STE F
Alameda, CA 94501

This property is listed under CLEANERS (CAL000099117) as inactive since 06/30/1998. It is also listed under HAZNET (S100929462) as having photo chemicals / photo processing waste generated on-site.

- (53) 2424 Blanding
Alameda, CA

This property is listed under LUST (S105619681) and under the Alameda County LUST Program as Facility ID RO0000671. No further information is available except that the case is closed.

- (53) First Samoan Congregation Church
2425 Blanding Ave.
Alameda, CA. 94501

This property is listed under HAZNET (S105084810) as having other empty containers 30 gallons or more. Containers are disposed of through recycling.

- (53) Allied Engineering and Prod. Corp.
2421 Blanding Ave.
Alameda, CA 94501

This property is listed on HAZNET (S100929246) as having unspecified oil-containing waste, unspecified solvent mixture waste, and waste oil and mixed oil. It is also listed under SLIC Region 2 as an inactive facility and a closed case.

- (57) Stone Boat Yard
2517 Blanding Ave.
Alameda, CA 94501

This property is listed on HAZNET (S102002612) as having oxygenated solvents (acetone, butanol, ethyl acetate, etc.) and asbestos-containing waste.

- (59) Blanding / Park (North side of Park)
Alameda, CA 94501

This property was reported under CHMIRS (S100219411) as a below ground oil release (OES Control Number 9009670) of an unspecified quantity of oil which occurred on January 11, 1990. No other information is currently available.

(62) Fuji Trucolor, Inc.
2639 Blanding Ave.
Alameda, CA 94501

This property was reported under HAZNET (S102813028) as having metal sludge, an alkaline solution with metals (antimony, arsenic, barium, beryllium, cadmium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc), and other inorganic solid waste.

(62) Classic Cleaners
2631 Blanding Ave.
Alameda, CA 94501

This property was listed under RCRIS-SQG (1000374406) as a small quantity generator (SQG). The FINDS database (CAD982414971) identified the site under AIRS/AFS, FRS, NET, NTI, and RCRAINFO. HAZNET (no EPA identification number given) lists the site as having liquids with halogenated organic compounds greater than 1000 mg/l. The CLEANERS database, under CA Cleaners, lists the site as inactive on 01/01/1995.

(65) Alpha Beta
2691 Blanding Ave.
Alameda, CA 94501

This property is listed under CORTESE (S100223508) as having a leaking underground storage tank. No other information is available at this time.

(67) Clifford E. Mapes, Inc.
2001 Versailles Ave.
Alameda, CA

Properties listed under (67) may not be adjacent.

This property is listed under the LUST database (S101306285) as being under the Local UST Oversight Program for a leaking UST discovered during removal. The site is classified as "other ground water affected". Testing indicated MTBE present. No action is indicated as having been taken. The property is also listed under LUST Region 2 (Case Number T0600100798) with a case closed status and in CORTESE. (ID 01-0864).

(67) 2001 Versailles Ave.
Alameda, CA

This property is listed under LUST (S105619647) as RWQCB Site ID 607 with a case closed status as of 2/1/99.

(67) EXXON Co.
2001-A Versailles
Alameda, CA 94501

This property is listed under RCRIS-SQG (1000336470) as a small quantity generator. It is also listed in FINDS (CAT000646133) under both FRS and RCRAINFO.

(78) Station "B"
3133 Marina Drive
Alameda, CA 94501

This property is listed under HISTORICAL UST (U001596162) as having a 600 gallon product tank. There is no indication that the tank has been removed.

(82) 3253 Fernside Drive
Alameda, CA 94501

This property is listed under CHMIRS (S105671157). A petroleum sheen was reported by an unknown caller to OES (Control Number 01-6074). No additional information is available at this time.

(84) 3313 Fernside Drive
Alameda, CA 94501

This property is listed under CHMIRS (S100276472). A diesel spill of 5 gallons was reported on 19 October 1990 to OES (Control Number 9099637). The property is also listed on the ERNS database (8873500).

ADJACENT PROPERTIES WITHIN THE CITY OF OAKLAND:

- (4) Oakland Port of Monsanto Co.
Dennison St. and Embarcadero St.
Oakland, CA 94607

This property is listed under RCRIS-SQG (1000985074) as a Small Quantity Generator (SQG). It is also listed under HAZNET (CAR000001842) as having aqueous solutions with 10% or more total organic residues, unspecified oil containing wastes, other organic solids, and waste potentially containing dioxins. FINDS found similar listings under both FRS and RCRAINFO.

- (5) 2301 Embarcadero Union Pt. Basin Marina
Oakland, CA

This property is listed under ERNS (93316402). No other information is available at this time.

- (8) Conagra Inc.
2201 E. 7th St.
Oakland, CA 94606

This property is listed under HAZNET (S103642665, 1002850836) as having other organic solids, laboratory waste chemicals, waste oil mixed oil, asbestos-containing waste, liquids with halogenated organic compounds greater than 1000 mg/l, and unspecified oil-containing waste. It is also listed in CORTESE (ID 01-0442) as having a leaking underground storage tank. FINDS also shows the property listed in the AIRS/AFS, FRS, and NET databases.

- (20) Sea Power Marine
333 Kennedy St.
Oakland, CA 94606

This property is listed under RCRIS-SQG (1004676328) as a Small Quantity Generator (SQG). FINDS shows the property also listed on the FRS and RCRAINFO databases. HAZNET (S104233679) lists the property as having aqueous solutions with less than 10% total organic residues and off-specification, aged, or surplus organics on the property.

- (20) Rhodes & Jamieson Batch P
333 Kennedy St.
Oakland, CA 94606

The property is listed in CORTESE (S102435840; Reg. ID 01-1238) for a leaking underground storage tank.

- (20) Right Away Redy Mix, Inc.
401 Kennedy St.
Oakland, CA 94606

This property is listed on the HISORICAL UST database (U001599136) as having a 12,000 gallon tank containing diesel fuel. The LUST database (1000593721) lists the removal of a leaking diesel tank and subsequent tank and soil removal under the Local Oversight Program for USTs and is noted as case closed. The property is also listed under CORTESE (Reg. ID 01-1241) and FID (01001360). It is not clear if these entries relate to the same tank but the time periods given in each database indicate that it probably is. The property is also listed under HAZNET (S100943522) as having unspecified organic liquid mixtures and oil/water separation sludge on the property.

- (20) Moore and Sons Trucking
410 Kennedy St.
Oakland, CA 94606

This property is listed under RCRIS-SQG (1000985075) as a Small Quantity Generator (SQG). FINDS (CAR000001859) shows the property listed on the FRS and RCRAINFO databases.

- (34) Oakland Yard 019-072-015-00
333 23rd Ave
Oakland, CA

This property is listed on the CA FID UST (S101629608) database. No other information is currently available.

- (35) Iconoco Corp.
2901 Glascock Rd.
Oakland, CA 94601

This property is listed under HAZNET (S105090934) as having liquids with halogenated organic compounds greater than 1000 mg/l on site.

- (35) Traders Paradise
2904 Glascock
Oakland, CA 94601

This property is listed under HAZNET (S101629608) as having aqueous solutions with less than 10% total organic residues and other inorganic solid waste on site.

- (35) Glascock St. Prop.
2901 Glascock St.
Oakland, CA

This property is listed under HAZNET (S103649871) as having polychlorinated biphenyls (PCBs) and material containing PCBs on site.

- (35) 2901 Glascock St.
Oakland, CA

This property is listed on the LUST database (S105619465) as local site number 1138. No other information is available.

- (35) Glascock Partners
2901 Glascock St.
Oakland, CA 94612

This property is listed under HAZNET (S102803809) as having polychlorinated biphenyls (PCBs) and material containing PCBs on site.

- (35) Glascock Ave. Warehouse
2901 Glascock Ave.
Oakland, CA 94601

This property is listed on the LUST database (U003300232) as having a Preliminary Site Assessment and Work Plan dated 1/2/1965 for removing diesel contaminated soil. There is no information if the site was remediated but does show a stop date of 3/31/1999.

(36) Seaworks Inc. Warehouse
333 29th Avenue
Oakland, CA 94606

This property is listed on HAZNET (S100873690) as having unspecified organic liquid mixtures on site.

(49) Iconoco California, Inc.
303 Derby Ave.
Oakland, CA 94601

This property is listed under RCRIS-SQG (1000318052) as a Small Quantity Generator (SQG). FINDS (CAD981436009) shows the property listed on both the FRS and RCRAINFO databases. HAZNET lists the property as having unspecified organic liquid mixtures on site. The State LUST Program (Case Number 38-1114) indicates closure of a tank containing heater fluid and impacted soil as of 8/14/1996. A warning/notice of violation to uncooperative responsible parties (includes a Cease and Desist Order and a Cleanup and Abatement Order) was issued to the property owner. The property is also listed on the CORTESE database (Reg. ID 38-1114).

(49) Simmons Terminal Corp
315 Derby Ave.
Oakland, CA 94601

This property is listed under RCRIS-SQG (1000301608) as a Small Quantity Generator (SQG). It is also listed on the HISTORICAL UST database as having a 500 and a 280 gallon tank containing unleaded fuel.

(49) Petro-Stop, Inc.
315 Derby Ave.
Oakland, CA 94601

This property is listed on CORTESE (S101624291) and CA FID UST as having a 10,000 gallon tank containing unleaded fuel and a 12,000 gallon tank containing diesel fuel on site.

(49) Shell Oil Co. Oakland Plant
315 Derby Ave.
Oakland, CA 94601

This property is listed under RCRIS-SQG (1000288015) as a Small Quantity Generator (SQG). FINDS (CAD0000631200) shows the property listed on the FRS and RCRAINFO databases.

(54) U C Household Shipping Co. (024-0663-002-01)
333 Lancaster St.
Oakland, CA 94601

This property is listed under RCRIS-SQG (1000118205) as a Small Quantity Generator (SQG). FINDS (CAD981692122) located the site on both the FRS and RCRAINFO databases.

(63) 3600 Alameda Ave.
Oakland, CA

This property is listed on the LUST database (S105619338). No other information is given.

(63) Owens Illinois, Inc.
3600 Alameda Ave.
Oakland, CA 94607

This property is listed in the LUST database (S103881513) as having discovered a leaky diesel tank during closure in 1987 (State LUST case number 01S0071). A Work Plan was completed 2/5/1995 and a Preliminary Site Assessment is listed as in progress as of 1995. RCRIS lists the owner, OI Glass Containers, as a Large Quantity Generator (LQG) with waste categories D001 (Ignitable), D002 (Corrosive), D007 (Chromium), D008 (Lead), D018 (Benzene), D039 (Tetrachloroethylene), D040 (Trichloroethylene), and F005 (spent nonhalogenated solvents and solvent mixtures) on site in reportable quantities. Two compliance violations are listed for the site as of 1998. HAZNET (1000319786) lists the presence of liquids with halogenated organic compounds greater than 1000 mg/l, unspecified oil-containing waste, unspecified organic liquid mixture and alkaline solutions with metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc). The CA HAZNET database contained over 200 records for this site.

The property is also listed on the CORTESE, RICRIS-LQG, TRIS, CA FID UST and HISTORICAL UST databases. FINDS lists the site in AIR/AFS, BRS, FRS, NCDB, NET, NTI, RCRAINFO and TRIS. HISTORICAL UST indicates there are 11 tanks located on the property containing primarily diesel fuel, product and waste oil.

(75) 344 High Street
Oakland, CA 94601

This property is listed on the HIST UST (U001599004) as having 7 tanks on the property containing product (unspecified), diesel fuel, unleaded fuel, and waste oil. The property is also listed on CORTESE (S101624286, 01-0677) and CA FID UST.

(75) Gallagher & Burke Inc.
344 High Street
Oakland, CA 94601

FINDS found this property listed in AIRS/AFS, FRS, NET, and NTI.

(76) Hanson Aggregates Mid-Pacific
4501 Tidewater
Oakland, CA 94601

The property is listed in AST (A100184334) as having an aboveground storage tank. The property is also listed in CA WDS (S104586535) as have a waste discharge permit to discharge 0.04 million gal/day.

- (76) Tidewater Sand & Gravel
4501 Tidewater Ave.
Oakland, CA 94601

This property is listed in HAZNET (U001599032 / S101624303) as having Other Organic Solids, liquids with halogenated organic compounds greater than 1000 mg/l, unspecified organic liquid mixture, and off-specification, aged, or surplus organics. FINDS found this property listed in FRS and PCS. The property is also listed under LUST (case number 2098 – case closed), CORTESE, and HISTORICAL UST, which lists 4 tanks on the property.

- (76) James A. Peterson
4501 Tidewater Ave.
Oakland, CA 94601

This property is listed under HAZNET (S103660328) as having other empty containers 30 gallons or more, and waste oil and mixed oil.

- (76) California Stevedore & BA
4500 Tidewater
Oakland, CA 94601

This property is listed in the LUST database (S102426137) and CORTESE (01-1743, local case 4456) as having remediated a leaking tank (case closed).

- (77) 4575 Tidewater
Oakland, CA 94601

This property is listed in ERNS (94392488) and HMIRS (2000101077, 9900013016, 20015724, 2002084652, 2002084654, 200113916, and 96040623). No further information is currently available at this time.

- (77) ABF Freight Systems, Inc.
4575 Tidewater Ave.
Oakland, CA 94601

This property is listed in RICRIS-SQG (1000114617) as a Small Quantity Generator (SQG); under HAZNET for having oil/water separation sludge and waste oil and mixed oil on site. FINDS located the site on FRS and RCRAINFO. CORTESE, FID and HISTORICAL UST list the site as having storage tanks for unspecified product, diesel, regular, and waste oil on site.

- (80) White Brothers
4801 Tidewater Way
Oakland, CA 94601

This property is listed in LUST (S102441244) and CORTESE as having had a leaking diesel tank on the property. The impacted soil is reported as having been removed from the site.

- (81) Eastshore Lumber
4831 Tidewater Ave.
Oakland, CA 94601

This property is listed on HAZNET (S102805700) as having asbestos-containing waste on the property.

(81) Gary Nohr
4831 Tidewater Ave
Oakland, CA 94601

This property is listed in HAZNET (S103965630) as having asbestos-containing waste and other empty containers 30 gallons or more on the property.

ENCLOSURE 4
RESCISSION OF BOARD ORDER

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER NO. R2-2014-0026

**RESCISSION OF SITE CLEANUP REQUIREMENTS (ORDER NO. R2-2002-0091) for:
CAL STEEL COATING
U.S. ARMY CORPS OF ENGINEERS**

for the property located at:

SHORELINE PARCEL ADJACENT TO 2241 CLEMENT AVENUE
OAKLAND AND ALAMEDA HARBOR CHANNEL
ALAMEDA, ALAMEDA COUNTY

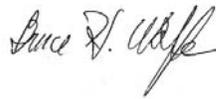
The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Water Board), finds that:

1. **Regional Water Board Order:** The Regional Water Board adopted Site Cleanup Requirements Order No. R2-2002-0091 (SCR) for the shoreline bank of the Oakland and Alameda Harbor Channel adjacent to the 2241 Clement Avenue property in Alameda (site) on September 18, 2002. The SCR named Cal Steel Coating and the U.S. Army Corps of Engineers (USACE) as dischargers. The SCR required the development and implementation of a Corrective Action Plan to focus on removing contaminated debris and waste along the site's bank to a depth of two feet below the surface. This included the site's collapsed concrete wharf, sandblast waste and slag material, and soil in the vicinity of the wharf to a depth of two feet below the surface. The SCR also required the impacted area to be restored after remediation. The location of the site is depicted on the attached site location map.
2. **Summary of Investigation and Remediation Activities:** USACE, working in cooperation with U.S. EPA, Cal-Recycle, BCDC, and the adjacent property owner (Francis Collins), removed all of the debris and waste material from the bank and near shore area at the site and disposed it offsite at an appropriate facility. In addition, the bank was fully restored with riprap, thereby protecting it from erosion in the future. No waste remains in-place and long-term monitoring, or engineering or institutional controls, are not needed at the site.
3. **Basis for Rescission:** The SCR addressed debris and pollution at the site. The objective of the SCR was to remove the waste to a depth of two feet below the surface, recognizing the limited funds available, and restore the bank in a manner acceptable to the Executive Officer and protective of human health and the environment. The remedial actions undertaken, as summarized above, have complied with, and exceeded, the requirements of the SCR by removing all waste and debris at the site. The site was properly restored in a manner acceptable to the Executive Officer and no issues remain.

4. **Next Steps Prior to Case Closure:** No further action is needed at the site prior to case closure.
5. **California Safe Drinking Water Policy:** It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Conditions at this site do not affect in any way potential sources of drinking water. Therefore, this policy does not apply.
6. **CEQA:** This action rescinds an order to enforce the laws and regulations administered by the Regional Water Board. Rescission of the order is not a project as defined in the California Environmental Quality Act (CEQA). There is no possibility that the activity in question may have a significant effect on the environment. (Cal. Code Regs., tit. 14 §§ 15378 and 15061, subd. (b) (3).)
7. **Notification:** The Regional Water Board has notified the dischargers and all interested agencies and persons of its intent under Water Code section 13304 to rescind the SCR for the discharge and has provided them with an opportunity to submit their written comments.
8. **Public Hearing:** The Regional Water Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to section 13304 of the Water Code, that Order No. R2-2002-0091 is rescinded.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on June 11, 2014.



Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe,
o=SWRCB, ou=Region 2,
email=bwolfe@waterboards.ca.gov,
c=US
Date: 2014.06.18 10:22:17 -07'00'

Bruce H. Wolfe
Executive Officer

Attachment: Site Location Map

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2002-0091

ADOPTION OF SITE CLEANUP REQUIREMENTS FOR:

CAL-STEEL COATING

U.S. ARMY CORPS OF ENGINEERS

ALAMEDA AND OAKLAND HARBOR CHANNEL
ALAMEDA COUNTY

for the property located at:

USACE property adjacent to 2241 Clement Avenue

Alameda

Alameda County

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter, the "Board") finds that:

FINDINGS:

1. **SITE LOCATION:** The USACE-owned property is located adjacent to 2241 Clement Avenue, between Ordinary High Water (OHW) and Mean High Water (MHW) in the City of Alameda, Alameda County (Figure 1). The northeast boundary of the property is Alameda Estuary, in the Oakland Harbor Channel. The southeast boundary is delineated approximately by a bulkhead that separates it from the remainder of the property at 2241 Clement Avenue (Figure 2). The geographic coordinates are approximately $37^{\circ} 46' 23''$ N and $122^{\circ} 14' 24''$ W.
2. **SITE DESCRIPTION:** The site is located adjacent to the Oakland Harbor Channel in a predominantly industrial and commercial area. The property line varies from 30 to 48 feet inland of the MHW mark. It is a small triangular-shaped "sliver" about one-quarter acre in size between MHW and OHW, sloping from the bulkhead down about ten feet in elevation. A floating wooden boat dock is

situated approximately 15 to 20 feet offshore from the property waterfront. The site contains a collapsed concrete wharf and other debris. The debris consists of sand blast waste on top of and mixed with soil. Currently, the site is not in use. The debris originated from disposal of waste by previous operators of the property above OWH at 2241 Clement Avenue. These waste piles and debris have the potential to migrate into Waters of the State.

3. **NAMED DISCHARGERS:** The named dischargers include the current owners and a previous operator of the site. These named dischargers are: Cal-Steel Coating and the USACE.

Cal-Steel Coating is named as a discharger because of previous operations at the site during the time when debris was deposited on the USACE-owned property.

The USACE is named as a discharger because it owns and has jurisdiction for the shoreline and channel portion of this property below OHW. The USACE has not, at any time, performed or authorized any activity that caused waste to occur on the site, and is named solely because of ownership of the property.

If additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the site where it entered or could have entered waters of the State, the Board will consider adding those parties' names to this Order.

4. **SITE CHARACTERIZATION:** The USACE has identified the extent of the USACE property in this area. The area of the collapsed concrete wharf has been identified as a potential threat to water quality or public health because of debris and waste related to the concrete wharf and onshore property. The USACE has volunteered to undertake removal of debris/deposits located on the USACE property in order to reduce the risk of exposure from these materials to public health or welfare or the environment. This action is limited to the area owned by the USACE between OHW and MHW where there is visible debris above ground on exposed soil. This action is the subject of this Order.

5. **REGULATORY STATUS:** This site is not currently subject to a Board Order because no business is currently using the site. The site is not currently subject to any enforcement action under provisions set forth in Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.A. 9601 et seq. (CERCLA). The USACE considers the Nelson Marine cleanup as a voluntary, non-time critical removal action, as set forth in paragraph 300.415b(2) of Executive Order 12580, 52 FR 2923, January 23, 1987 in the National Contingency Plan. This Order provides guidance for undertaking the removal action.

6. **BASIN PLAN:** The Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Bay Plan) on June 21, 1995. This updated and

consolidated plan represents the Board's main water quality control planning document. The revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20 and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters.

The existing and potential beneficial uses of San Francisco Bay Lower, of which Oakland Harbor Channel and Alameda Estuary are part of, include:

Ocean, Commercial and Sport Fishing	Estuarine Habitat
Industrial Service Supply	Fish Migration
Preservation of Rare and Endangered Species	Navigation
Water Contact Recreation	Shellfish Harvesting
Noncontact Water Recreation	Wildlife Habitat

At present, there is no known use of groundwater underlying the site.

7. STATE WATER BOARD POLICIES: State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality, or the highest level of water quality which is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, to not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives.

State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. This order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

8. CEQA COMPLIANCE: This order is an action to enforce the Water Quality Control Plan and as such is exempt from the California Environmental Quality Act pursuant to Section 15321 of the Resources Agency Guidelines.

9. COST RECOVERY: Pursuant to the California Water Code (Porter-Cologne), section 13304, the Board is allowed to recover reasonable expenses for overseeing the investigation and cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely affecting or threatening to adversely affect the State's waters. It is our intent to recover such costs for regulatory oversight work conducted in accordance with California Water Code section 13304. To assure that sufficient Board staff resources are available to conduct the necessary reviews and approvals, we intend to include this site in the Region's SLIC Cost Recovery Program, more fully described in the attached Reimbursement Process

for Regulatory Oversight enclosure. Reimbursement costs will be assessed proportionally to those costs already expended to cleanup the site.

10. **BASIS FOR 13304 ORDER:** Pursuant to California Water Code (Porter-Cologne), section 13304 and based on the above findings, the Board finds that the dischargers have caused or permitted waste to be discharged or deposited where it threatens to be and has been discharged into Waters of the State and created and threatens to continue to create a condition of pollution. This order, therefore, contains tasks for mitigating existing and potential future impacts to the Alameda Estuary, Oakland Harbor Channel and San Francisco Bay.

11. **CERCLA COMPLIANCE:** The USACE is authorized as a lead agency in execution of site cleanups under CERCLA and other applicable provisions of federal law to the extent possible. Pursuant to CERCLA, the USACE considers the Clean Water Act and the Porter Cologne Act as Applicable or Relevant Requirements (ARARs). The Board is issuing this order to guide application of those ARARs.

The California Water Code (Porter-Cologne) does not authorize the Board to determine liability under CERCLA. As such, issuance of this Order shall not constitute an assignment of liability under CERCLA. Further, compliance by the USACE of the provisions of this Order shall not constitute an admission of liability under CERCLA by USACE.

12. **NOTIFICATION:** The Board has notified the dischargers and all interested parties of its intent under California Water Code 13304 to prescribe site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.

13. **PUBLIC HEARING:** The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304, of Division 7 of the California Water Code, that the Dischargers shall cleanup the waste deposited and discharged, abate the effect of the discharge, and take other remedial actions as follows:

A. PROHIBITIONS

1. The discharge of waste or hazardous materials in a manner which will degrade water quality, adversely affect beneficial uses of Waters of the State, or in a way that is contrary to the specifications of this Order is prohibited.
2. Further migration of pollutants by surface transport to waters of the State is prohibited.

3. Activities associated with surface and subsurface investigation and cleanup, which will cause significant adverse migration of pollutants, are prohibited.
4. Wastes shall not be disposed of, in any way, where they can be carried from the site, or temporary storage site, and discharged into Waters of the State.
5. The treatment or storage of waste shall not cause pollution or nuisance as defined in Section 13050 of the California Water Code, and shall not degrade the quality of any water.
6. Disturbance of the Oakland Channel shall be minimized during operation of soil-excavating equipment by appropriate use of silt fencing, shoring, or pilings, as needed.

B. TASKS

Task 1. Corrective Action Plan. DUE DATE: October 30, 2005

The USACE shall submit a Corrective Action Plan acceptable to the Executive Officer that shall include a time schedule no longer than one year for the removal of waste and debris piles from the site. Given the limits of appropriated public funds to this cleanup project at this time, The remedial action will focus on removing contaminated surface debris no more than two feet below the surface, including the concrete wharf, waste sandblasting slag piles, and soil in the vicinity of the concrete wharf.

Task 2. Corrective Action. DUE DATE: within one year of completion of Task 1

The Corrective Action shall consist of the activities described in the approved Corrective Action Plan submitted in Task 1.

Task 3. Corrective Action Completion Report. DUE DATE: within 60 days of completion of Task 2

The USACE shall submit a technical report acceptable to the Executive Officer following completion of the Corrective Action. The report shall identify any area(s) excavated and volume of soils removed. The report shall also document actions undertaken to confirm completion of activities, such as sampling and analysis procedures and results of analyses.

Task 4. Site Restoration. DUE DATE: within 90 days of completion of activities described in Task 3

Upon completion of the corrective action, the USACE shall restore impacted areas of the site in a manner acceptable to the Executive Officer. Excavated areas may be backfilled, compacted, and either repaved or seeded with native grasses. Existing pavement may also require replacement or repair.

Task 5. Site Restoration Report. DUE DATE: within 60 Days of completion of Restoration Activities

The USACE shall submit a report acceptable to the Executive Officer to document the completion of the restoration.

C. PROVISIONS

1. The use of controlled work zones and personal protective equipment shall be used to mitigate on-site worker exposure to potentially hazardous materials at the site. Appropriate dust control measures shall be used to minimize fugitive dust.
2. The proposed removal action will be conducted in compliance with all applicable federal, state, and local environmental laws.
3. If the dischargers are delayed, interrupted or prevented from meeting one or more of the completion dates specified in this Order, the dischargers shall promptly notify the Executive Officer in writing and if accepted, the new dates shall be an addendum to this Order.
4. No nuisance: The storage, handling, treatment, or disposal of polluted soil or other debris shall not create a nuisance as defined in California Water Code Section 13050(m).
5. Good O & M. The dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system installed to achieve compliance with the requirements of this Order.
6. Cost Recovery. The dischargers shall be liable, pursuant to California Water Code Section 13304, to the Board for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and the oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. If the site addressed by this Order is enrolled in a State Board managed reimbursement program,

reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

7. Access to Site and Records. In accordance with the California Water Code Section 13267, the discharges shall permit the Board or its authorized representative:
 - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
 - b. Access to copy any records required to be kept under the requirements of this Order.
 - c. Inspection of any monitoring or remediation facilities installed in response to this Order.
 - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the dischargers.
8. Contractor/Consultant Qualifications: All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.
9. Laboratory Qualifications: All samples shall be analyzed by State certified laboratories or laboratories accepted by the Board, using approved EPA methods for the type of analysis performed. All laboratories shall maintain quality assurance/quality control records for Board review. This provision does not apply to analyses that can only be reasonably be performed onsite (e.g., temperature).
10. Reporting of Hazardous Substance Release. If any hazardous substance is discharged in or on any water of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the dischargers shall report such discharge to the Regional Board by calling (510) 622-2300 during regular office hours (Monday through Friday 8:00 to 5:00). A written report shall be filed with the Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective action taken or planned, schedule of corrective actions planned, and persons/agencies notified. This report is in addition to reporting to the

Office of Emergency Services required pursuant to the Health and Safety Code.

11. Document Distribution. Copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the appropriate parties.
12. Periodic Order Review. The Board will review this Order and may periodically revise it when necessary.

Pursuant to California Water Code Sections 13304 and 13350, if a discharger fails to comply with the provisions of this Order, the Board may schedule a hearing to consider assessing civil monetary penalties and to consider requesting the Attorney General to take appropriate enforcement action against the discharger, including injunctive and civil monetary penalties.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted on September 18, 2002 by the California Regional Water Quality Control Board, San Francisco Bay Region.

Loretta K. Barsamian
Executive Officer

ENCLOSURE 5

CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions

1. CERCLA NOTICE

For the Property, the GRANTOR provides the following notice, description, and covenants and retains the following access rights:

A. Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C §§ 9620(h)(3)(A)(i)(I) and (II)):

Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C §§ 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time which such substances were stored, released, or disposed of on the Property, as defined in section 120(h), is provided in Exhibit B, attached hereto and made a part hereof.

B. Description of Remedial Action Taken, if Any, Pursuant to Section 1230(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)):

Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit B, attached hereto and made a part hereof.

2. CERCLA COVENANT

A. Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(ii) and (B)):

Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(ii) and (B)), the United States warrants that:

(1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed, and

(2) any additional remedial action found to be necessary after the date of this Deed shall be conducted by the UNITED STATES.

This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, The Grantee shall not be considered a potentially responsible party solely due to the presence of a hazardous substance remaining on the property on the date of this instrument, provided that The Grantee has not caused or contributed to a release of such hazardous substance.

3. CERCLA RIGHT OF ACCESS

A. Access rights pursuant to section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C §9620(h)(3)(A)(iii)):

(1) The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of the UNITED STATES, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the UNITED STATES to meet its responsibilities under applicable laws, and as provided for in this instrument. Such easement and right of access shall be binding on the GRANTEE, its successors and assigns, and shall run with the land.

(2) In exercising such easement and right of access, the UNITED STATES shall provide the GRANTEE or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The UNITED STATES shall use reasonable means to avoid and to minimize interference with the GRANTEE'S and the GRANTEE'S successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the UNITED STATES. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the GRANTEE, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the UNITED STATES.

(3) In exercising such easement and right of access, neither the GRANTEE nor its successors and assigns, as the case may be, shall have any claim at law or equity against the UNITED STATES or any officer or employee of the UNITED STATES based on actions taken by the UNITED STATES or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause; provided, however, that nothing in this paragraph shall be considered a waiver by the GRANTEE or its successors and assigns of any remedy available under the Federal Tort Claims Act.

4. "AS IS" CONDITION

A. The GRANTEE acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the Property. The

GRANTEE understands and agrees that the Property is conveyed in its “AS IS” condition without any representation, warranty, or guaranty by the GRANTOR as to quantity, quality, title, character, condition, size, or kind, or that the same is in a suitable condition or fit to be used for the purpose(s) intended by the GRANTEE, and no claim for allowance or deduction upon such grounds shall be considered.

B. No warranties, either express or implied, are given with regard to the condition of the Property including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. The GRANTEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of the Property including, without limitation, the presence of any asbestos, lead-based paint, or other conditions on the Property. The failure of the GRANTEE to inspect or to exercise due diligence to be fully informed as to the condition of the Property shall not constitute grounds for any claim or demand against the UNITED STATES.

C. Nothing in this “AS IS” condition provision shall be construed to modify or negate the GRANTOR’S obligation under the covenant pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B)), or any other statutory obligations.

5. HOLD HARMLESS

A. To the extent authorized by law, the GRANTEE, its successors and assigns, covenant and agree to indemnify and hold harmless the GRANTOR, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the covenants, conditions, and restrictions in this Deed by the GRANTEE, its successors and assigns, as applicable, and (2) any and all claims, damages and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property related to a discharge or exposure taking place after the date of conveyance and during the GRANTEE’S, its successors’ and assigns’ ownership of such portion of the Property.

B. The GRANTEE, its successors and assigns, covenant and agree that the GRANTOR shall not be responsible for any costs associated with modification or termination of the covenants, conditions, and restrictions in this Deed including, without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property related to a discharge or exposure taking place after the date of conveyance and during the GRANTEE’S, its successors’ and assigns’ ownership of such portion of the Property.

C. Nothing in this Hold Harmless provision shall be construed to modify or negate the GRANTOR’S obligation under the covenant pursuant to sections 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B)), or any other statutory obligations.

6. POST-TRANSFER DISCOVERY OF CONTAMINATION

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property or any individual Parcel(s), after the date of conveyance, the GRANTEE, its successors or assigns, shall be responsible for such release or threatened release of such newly discovered substance, unless the GRANTEE, its successors or assigns is able to demonstrate that such release or newly discovered hazardous substance or petroleum product was due to the GRANTOR'S activities, use, or ownership of the Property. If the GRANTEE, its successors or assigns, believes the discovered hazardous substance or petroleum product was due to the GRANTOR'S activities, use or ownership of the Property, the GRANTEE, its successors or assigns will immediately secure the site and notify the GRANTOR of the existence of the hazardous substance or petroleum product and the GRANTEE, its successors and assigns shall not further disturb or allow the disturbance of such hazardous substance or petroleum product without the prior written permission of the GRANTOR.

B. The GRANTEE, its successors and assigns, as part of the consideration for the conveyance of the Property or any individual Parcel(s), agree to release the GRANTOR from any liability or responsibility for any claims arising solely out of the release or threatened release of any hazardous substance or petroleum product on any portion of the Property related to a discharge or exposure occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property or any individual Parcel(s) by the GRANTEE, its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the GRANTOR'S responsibility to conduct response actions or corrective actions that are required by applicable laws, rules and regulations.

7. NON-DISCRIMINATION COVENANT

The GRANTEE, its successors and assigns, covenant that such GRANTEE, its successors and assigns, shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale or lease of any Parcels(s), or in its employment practices conducted on or in relation to the Parcel(s), as long as it holds such interest to the Parcel(s). For the avoidance of doubt, the foregoing covenant shall constitute, with respect to each and every Parcel, a "covenant that runs with the land" that applies to and that obligates the GRANTEE, its successors and assigns. The UNITED STATES shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Parcel(s) and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

8. ANTI-DEFICIENCY ACT

The GRANTOR's obligation to pay or reimburse any money under the Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army and nothing in the Deed shall be interpreted to require obligations or payments by the GRANTOR in violation of the Anti- Deficiency Act, 31 U.S.C. § 1341.

9. NO WAIVER

The failure of the GRANTOR to insist in any one or more instances upon complete performance of any obligation of the GRANTEE, its successors or assigns required by the covenants, conditions, or restrictions set forth in the Deed shall not be construed as a waiver or a relinquishment of the GRANTOR'S right to the future performance of any such obligation of the GRANTEE, or its successors or assigns, required by said covenants, conditions, and restrictions, and such obligations of the GRANTEE, its successors and assigns, shall continue in full force and effect.

ENCLOSURE 6
FONSI AND ENVIRONMENTAL ASSESSMENT

DRAFT
FINDING OF NO SIGNIFICANT IMPACT (FONSI)

(33 CFR Part 230-325)

Oakland Inner Harbor Tidal Canal – Surplus Property Divestiture
Alameda County, California

- 1) Action: The Corps intends to divest itself of ownership of a parcel of real property known as the Oakland Inner Harbor Tidal Canal (OIHTC), located within the cities of Oakland and Alameda. The OIHTC is a navigable waterway, approximately 85 acres in size, 400-feet wide, and nearly 2 miles long. A narrow strip of shoreline on each side of the canal is also included in the property footprint. The Federal property begins approximately 1,800 feet northwest of the Park Street Bridge and terminates at the mouth of San Leandro Bay.

The United States does not need the property for any Army related mission and the Corps believes that there is no longer a Federal interest in ownership of the canal. It should therefore be disposed of in accordance with Army regulations. The Corps intends to subdivide the property into several parcels and cede the Alameda side to the City of Alameda and the Oakland side to the East Bay Regional Park District (EBRPD) or another designated public agency. With the transfer of this property to the city of Alameda and the EBRPD, the Corps proposes to end its existing regulatory moratorium (Section 1.3) on permitting of structures in the OIHTC outside of the federal channel. However, the Corps will continue to retain maintenance responsibilities pertaining to the navigation boundaries of the OIHTC, as it is still considered a federally authorized channel until such time as it is de-authorized by an act of Congress.

The High Street Bridge, the Park Street Bridge and the Miller-Sweeney Bridge are highway bridges that span the OIHTC. They are currently owned by the County of Alameda and are not part of the proposed action. The Federal property on which the footings of these three bridges rest, will not be transferred as part of this proposed action. The Fruitvale Avenue Railroad Bridge, which also spans the canal (adjacent to the Miller-Sweeney Bridge), is Federal property and will not be transferred as part of this proposed action. The Corps will retain the responsibility for operation and maintenance of the railroad bridge in accordance with Congressional direction.

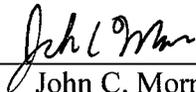
- 2) Factors Considered: Factors considered for this FONSI were direct, indirect, and cumulative impacts to air and water quality, aquatic and terrestrial habitat, biologic resources, endangered/threatened species, recreation and public facilities/services, transportation and traffic, noise, aesthetics, land use, hazardous and toxic materials, energy consumption and generation, and cultural and historic resources. There is no change in land use anticipated from this action and

Finding of No Significant Impact – Oakland Inner Harbor Tidal Canal
Surplus Property Divesture, Alameda County, California

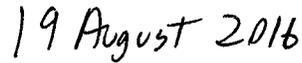
therefore no anticipated impacts from the transfer of title.

- 3) Public Comment: The Environmental Assessment was made available for public comment from July 22, 2016 through August 12, 2016. Notices for this comment period were mailed to all adjacent property owners within a 300 foot radius of the project. A total of six written comments were received. These comments did not identify any impacts from this Federal action.
- 4) Conclusion: Based on a review of information incorporated in the Environmental Assessment, including views of the Corps, general public, and resource agencies having special expertise or jurisdiction by law, the Corps concludes the proposed Federal action would not significantly affect the quality of the human environment. Pursuant to the provisions of the National Environmental Policy Act of 1969, the preparation of an additional Environmental Impact Statement (EIS) will therefore, not be required.

Approved by:



John C. Morrow
Lieutenant Colonel, U.S. Army
District Commander



Date

**ENVIRONMENTAL ASSESSMENT
OAKLAND INNER HARBOR TIDAL CANAL
SURPLUS PROPERTY DIVESTITURE**

**Alameda County, California
Fiscal Year 2016**



**U.S. Army Corps of Engineers
Environmental Section B
San Francisco District
May 2016**

Table of Contents

1.0 PURPOSE AND NEED FOR ACTION.....	1
1.1 Purpose.....	1
1.2 Proposed Action and Need.....	1
1.3 Regulatory Moratorium.....	1
1.4 Authority.....	2
1.5 Previous Documents.....	2
1.6 Property Description	3
1.6.1 Location and Extent.....	3
1.6.2 Historical Background.....	4
1.7 Structures	5
1.7.1 Oakland Shoreline	5
1.7.2 Alameda Shoreline	6
1.8 Organization of this Environmental Assessment	6
2.0 ENVIRONMENTAL COMPLIANCE.....	7
2.1 Federal Laws	7
2.2 California State Laws	9
3.0 PROJECT ALTERNATIVES.....	9
3.1 No Action Alternative	9
3.2 Action Alternatives	9
3.3 Environmentally Preferred Alternative	10
4.0 AFFECTED ENVIRONMENT	10
4.1 Physical Factors	10
4.1.1. Geology and Soils	10
4.1.2 Water Resources	11
4.2 Water Quality	11
4.3 Climate.....	11
4.4 Visual Resources/Aesthetics.....	11
4.5 Cultural Resources.....	12
4.6 Air Quality.....	13
4.7 Biology	13
4.8 Noise.....	13
4.9 Land Use	14

4.10 Transportation and Utilities 14

4.10.2 Utilities 14

4.11 Hazardous Materials..... 14

4.12 Recreation 15

4.13 Socioeconomic Factors..... 15

4.13.1 Population 15

4.13.2 Income..... 15

4.13.3 Public Services 15

4.14 Cumulative Impacts..... 16

5.0 ENDANGERED AND THREATENED SPECIES..... 16

5.1 Fish..... 16

5.2 Reptiles and Amphibians..... 17

5.3 Birds..... 17

5.4 Invertebrates 18

5.5 Mammals..... 18

5.6 Plants 18

6.0 MAGNUSON-STEVENSON ACT ESSENTIAL FISH HABITAT 18

7.0 COORDINATION 19

8.0 CONCLUSION..... 19

9.0 REFERENCES 19

Figure 1 – Location of Oakland Inner Harbor Tidal Canal 3

Figure 2 – Aerial Photo of OIHTC 4

Appendix A – Maps with Parcels A - 1

Appendix B – Baseline Testing Maps B - 1

Appendix C – Endangered Species Lists C - 1

Appendix D – Public Noticing D - 1

Appendix E – Comments and Responsiveness Summary E - 1

LIST OF ACRONYMS

ABAG	Association of Bay Area Governments
AC	Alternating Current
APE	Area of Potential Effects
AR	Army Regulation
BCDC	Bay Conservation & Development Commission
BMP	Best Management Practices
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CNDDB	California Natural Diversity Database
CNPS	California Native Plant Society
CORPS	U.S. Army Corps of Engineers, San Francisco District
CWA	Clean Water Act
DC	Direct Current
DFW	California Department of Fish and Wildlife
DOD	Department of Defense
DWR	California Department of Water Resources
EA	Environmental Assessment
EFH	Essential Fish Habitat
EPA	Environmental Protection Agency
ESA	Endangered Species Act
ESU	Evolutionary Significant Unit
FMP	Fisheries Management Plans
FOST	Finding of Suitability to Transfer
HTWA	Hazardous and Toxic Waste Assessment
MHHW	Mean Higher High Water (Tide)
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NOAA Fisheries	U.S. National Marine Fisheries Service
NRHP	National Register of Historic Places
OIHTC	Oakland Inner Harbor Tidal Canal
RWQCB	California Regional Water Quality Control Board
SHPO	State Historic Preservation Office
SIP	State Implementation Plan
USACE	U.S. Army Corps of Engineers, San Francisco District
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey

1.0 PURPOSE AND NEED FOR ACTION

1.1 Purpose

This Environmental Assessment (EA) has been prepared by the United States Army Corps of Engineers, San Francisco District (Corps), in accordance with the National Environmental Policy Act (NEPA) of 1969. Its purpose is to identify any possible direct, indirect and/or cumulative significant impacts to the human environment resulting from the proposed action.

1.2 Proposed Action and Need

The Corps intends to divest itself of ownership of a parcel of real property known as the Oakland Inner Harbor Tidal Canal (OIHTC), located within the cities of Oakland and Alameda. The OIHTC is a navigable waterway, approximately 85 acres in size, 400-feet wide, and nearly 2 miles long. A narrow strip of shoreline on each side of the canal is also included in the property footprint. The Federal property begins approximately 1,800 feet northwest of the Park Street Bridge and terminates at the mouth of San Leandro Bay.

The United States does not need the property for any Army related mission and the Corps believes that there is no longer a Federal interest in ownership of the canal. It should therefore be disposed of in accordance with Army regulations. The Corps intends to subdivide the property into several parcels and cede the Alameda side to the City of Alameda and the Oakland side to the City of Oakland or another designated public agency. With the transfer of this property to the cities of Oakland and Alameda, the Corps proposes to end its existing regulatory moratorium (Section 1.3) on permitting of structures in the OIHTC outside of the federal channel. However, the Corps will continue to retain maintenance responsibilities pertaining to the navigation boundaries of the OIHTC, as it is still considered a federally authorized channel until such time as it is de-authorized by an act of Congress.

The High Street Bridge, the Park Street Bridge and the Miller-Sweeney Bridge span over the OIHTC, are currently owned by Alameda County, and are not part the proposed action. The Fruitvale Avenue railroad bridge, which spans the canal (adjacent to the Miller-Sweeney Bridge), and the footings for the High Street Bridge, the Park Street Bridge and the Miller-Sweeney Bridge, are Federal property and will not be transferred as part of this proposed action. The Corps will retain the responsibility for maintaining the railroad bridge in accordance with Congressional decisions.

1.3 Regulatory Moratorium

Over time, dozens of private parties (homeowners, businesses, etc.) built structures on federal land along the canal, on both the Oakland and Alameda sides of the canal. Many private property parcels abutting the OIHTC have docks or other structures that encroach upon Federal property. In accordance with Federal law, any construction on Federal property must be approved by the Corps through a permitting (Regulatory) and licensing (Real Estate) process. Given the lack of planned management of the OIHTC waterfront and the ongoing negotiations to transfer the property to the cities of Oakland and Alameda, on December 18, 2000, the Corps instituted a moratorium. This was to encourage local management of the respective waterfronts, which, as modified in 2003, 2004, and 2007, declares that the Corps will not issue: (1) regulatory permits

for repair; (2) regulatory permits for new work to existing structures; or (3) regulatory permits to start new construction. Exceptions may be granted, however, upon written request to repair an existing structure in-kind that is in such disrepair that it is – or may soon become - hazardous. In this context, the Corps considers maintenance as a one-for-one replacement of a currently serviceable structure such that it does not change the structure's footprint, purpose, or location. "Currently serviceable" refers to a structure that is currently fit for its intended purpose and not so degraded as to essentially require reconstruction.

Upon transfer of ownership of the OIHTC, the Corps would lift the moratorium, since it will no longer be Federal property. Adjacent property owners would then be authorized to apply for regulatory permits to repair and improve existing structures along the waterfront. The Corps, in its regulatory capacity, would review all permit applications to ensure compliance with Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, in addition to review by other applicable resource agencies with jurisdiction.

1.4 Authority

The land in question was condemned for public use on October 20, 1884. The public interest was to excavate the land for a tidal canal, allowing water from San Leandro Bay into Oakland Harbor to remove sediment and deepen Oakland Harbor, thus improving navigation to the Inner Harbor.

Pursuant to Section 205 of the Water Resources Development Act (WRDA) of 1990, Pub. L. No. 101-640 amended by Section 501(b) of WRDA 1996, Pub. L. No. 104-303 the Corps is authorized to dispose of the entire OIHTC to the cities of Alameda and Oakland, or to adjacent landowners, at fair market value. Section 3182(b) of WRDA 2007, Pub. L. No. 110-114, authorizes the Corps to transfer the canal to the cities of Oakland and Alameda, or to a public entity created or designated by the city of Alameda, without consideration. It further authorizes transfer to the owners of the adjacent land owners, at fair market value.

Current guidance on real estate owned by the Corps is Army Regulation (AR) 405-80 as amended October 10, 1997. This regulation allows the Corps to manage or grant title to real property under its control.

1.5 Previous Documents

Draft Engineering Evaluation/Cost Analysis for the Nelson's Marine Site, Alameda, California prepared for the U.S. Army Corps of Engineers, Sacramento District by Geofon, Inc. May 2, 2000.

Draft Environmental Assessment for the Nelson's Marine Site, Alameda, California prepared for the U.S. Army Corps of Engineers, Sacramento District by Geofon, Inc. May 2, 2000.

1.6 Property Description

1.6.1 Location and Extent

The OIHTC property consists of approximately 85 acres located within the Oakland Inner Harbor Tidal Canal, which spans the stretch of water that separates the City of Alameda from the City of Oakland, in Alameda County. The property begins just southeast of Coast Guard Island and extends to San Leandro Bay. See Figures 1 and 2. Detailed property maps showing parcel and federal boundaries are located in Appendix A.

The OIHTC is entered via the San Francisco Bay and the Oakland Inner Harbor. Oakland Harbor is located in the City of Oakland, in Alameda County, California, along the eastern portion of San Francisco Bay. The strip of land is nearly 400 feet wide, including an upland strip of up to 50 feet wide on each side, and is almost two miles long. One portion is in the City of Oakland, and the other in the City of Alameda.

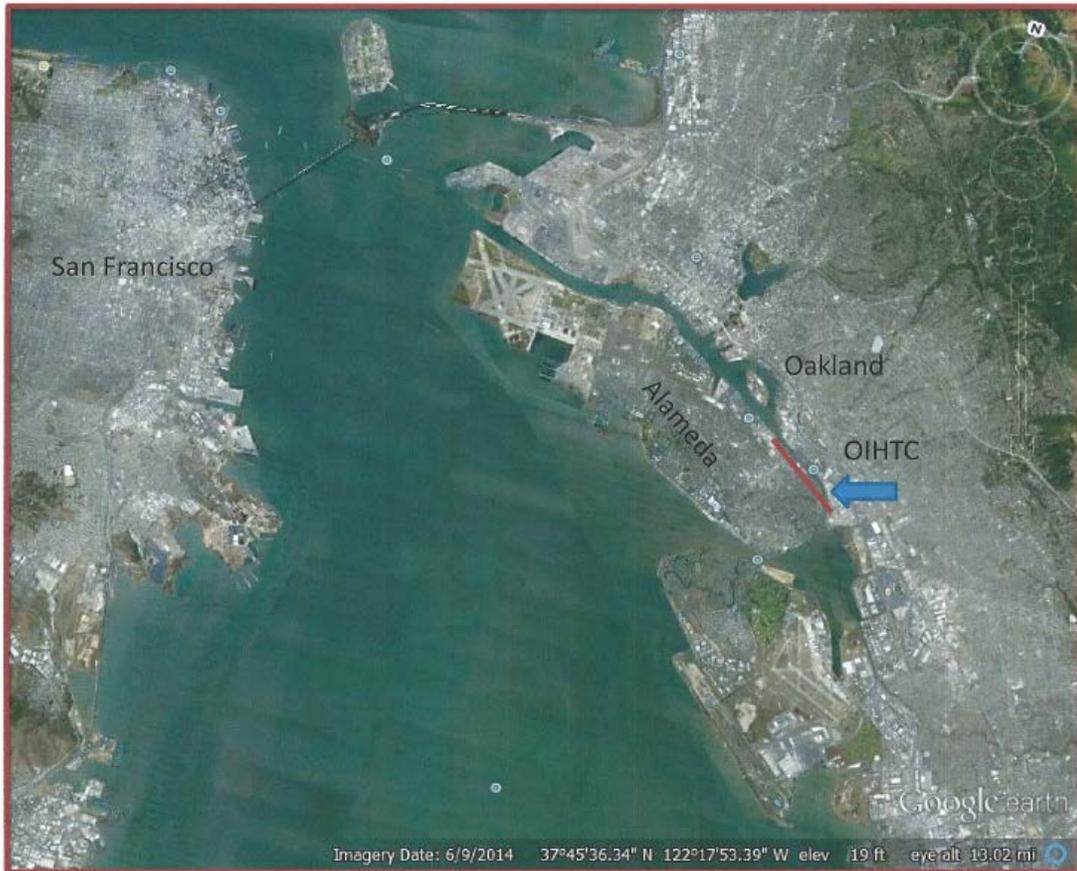


Figure 1 – Location of Oakland Inner Harbor Tidal Canal

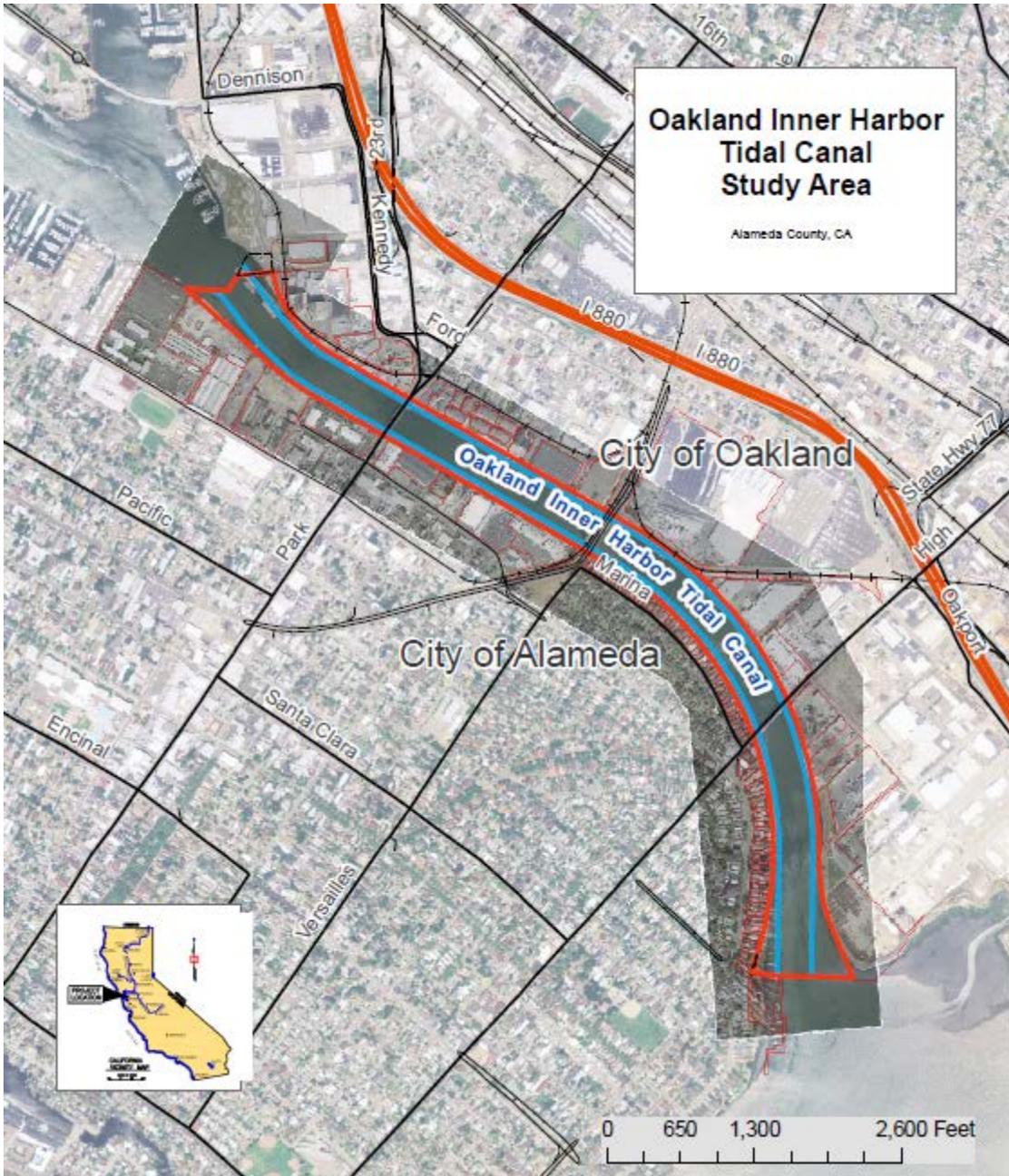


Figure 2 – Aerial Photo of OIHTC

1.6.2 Historical Background

The OIHTC was part of the plan conceived by Colonel G. H. Mendell, San Francisco District Engineer 1871-1895, for harbor improvements to the tidal inlet between Oakland and Alameda. Oakland was the first harbor to receive attention by the Corps of Engineers. Commercial ships could navigate as far east as Government Island, where the Estuary narrowed to an unnavigable channel. The channel ended a few hundred yards further east, whereupon a peninsula connected

Alameda with Oakland. Most of the area bordering the Inner Harbor was marshlands that became the Oakland Harbor. The OIHTC provided a connection between the tidal basin and San Leandro Bay.

In 1884, the Federal Government took ownership of the OIHTC and commenced dredging operations to create the channel that is known as the OIHTC. Soon after the canal was constructed, adjacent property owners began to encroach on the Federal property by constructing wharfs and docks. On June 3, 1913, the Federal Government issued a license to all owners of property adjacent to the canal. This license granted these property owners permission “. . . to occupy, with open-work, nonpermanent structures for wharf purposes, on the portions of the strip of US property fronting their respective properties and situated between the pier head and bulkhead lines approved January 20, 1913, without special lease or charges of any kind. . . .” The rights granted by this license were “. . . revocable at any time when this area may again be required for purposes of navigation. . . .” In 1929, the pier head and bulkhead lines were combined thus rendering the original license invalid. Regardless of the question of validity of the 1913 license, any existing license would have expired automatically upon transfer of that particular adjacent parcel. Prior to the Regulatory Moratorium, the Corps issued several easements and licenses to construct, repair and maintain structures along the OIHTC, including boathouses and docks along the Alameda side of the canal.

1.7 Structures

1.7.1 Oakland Shoreline

As stated in Section 1.6.2 of this document, the Corps granted limited permission to adjacent property owners to erect temporary structures for wharf purposes on June 3, 1913. Since that time, a total of 22 residential structures have encroached on the Oakland side of the canal. The Corps stated in their 1913 permit that *“it is expressly understood that this permission is revocable at any time . . . and shall not be construed as a relinquishment of the government title to the said right of way.”* As of February 25, 1960, the City of Oakland declared all these structures public nuisances as well as health and safety hazards and requested the Federal Government notify the occupants that they were trespassers. Subsequently, the City of Oakland demolished all condemned structures that were entirely or partially built on city property. Three structures located at 3221, 3223 and 3225 Alameda Avenue were not removed by the City because they were situated entirely on Federal property and the City did not have the authority to remove them.

During transfer negotiations, the City of Oakland requested that their parcel (the Oakland waterfront) be freed of all encroachments, by removal or out grant, before it would accept its portion of the property. Since the three Alameda Avenue structures were trespassing in areas under the Corps’ jurisdiction, Corps archeologists conducted background research to determine if the structures had any historical significance, prior to ordering their removal. Some local residents claimed that the structures were “arks”; however, research determined that these structures did not meet “ark” criteria. True arks were brightly colored single story structures built on a barge. Arks were used as summer hideaways moored in lagoons and other resort areas throughout the bay in the early 20th century.

The Corps determined that the three Alameda Avenue structures did not have any redeeming historical significance and that they were, in fact, health and safety hazards. In February and March of 2005 the Real Estate Division of the Sacramento District of the U.S. Army Corps of Engineers served the owners of these structures with notice to remove them within 120 days. The Federal Government filed a complaint in the United States District Court for the Northern District of California for ejection, trespass, injunctive relief, and damages. Pursuant to Consent Decrees of December 2007, the owners of the structures agreed to remove the structures in accordance

with all federal, state, and local laws and regulations. These three structures were subsequently demolished by the owners.

1.7.2 Alameda Shoreline

Residential Activities

There are several encroachments on the Alameda side of the canal, but significantly, these encroachments consist of docks and boathouses that are attached to adjacent parcels and some are not entirely situated on Federal land. There are approximately 93 residential parcels adjacent to the canal and most of these properties contain structures accessing the canal. Most of the property owners received easements and licenses from the Corps to construct the existing structures. However, after the Permitting Moratorium, most of these real estate licenses have expired leaving most of the existing structures technically in trespass.

Upon successful transfer of title of the Alameda side of the canal to the City of Alameda, it is envisioned that the city would, in turn, transfer ownership of individual parcels to the respective adjoining property owners. In this way, these structures would no longer be in trespass and management of the shoreline would be up to the subsequent owners and subject to local, state and federal regulations.

Commercial Activities

Similar to the residential area, there are a few structures in the commercial area on the Alameda side of the Federal property (Park Street Marina, Dutra Construction dock, and Stone Boat Yard docks), which were constructed under real estate licenses from the Corps. The property located at 2235 and 2441 Clement Avenue adjacent to the canal is owned by Francis Collins. The former tenant on this property, Nelson's Marine, conducted sand blasting operations using silica and nickel slag blast grit. Other previous tenants slag blasted with copper and other abrasives. These activities impacted a portion of the OIHTC on Federal property.

Due to contaminants present on the property, the San Francisco Regional Water Quality Control Board (SFRWQCB) issued Order R2-2002-0091 for the clean up of the site. The Corps submitted a Corrective Action Plan (CAP) to meet the final site clean up requirements of the SFRWQCB. The CAP has been completed.

1.8 Organization of this Environmental Assessment

Section 1.0 defines the purpose and need for the proposed action, the project area and location of the proposed action. Section 2.0 presents the regulatory setting for environmental compliance. Proposed project alternatives are listed and defined in Section 3.0. The affected environment and any impacts expected in the study area, assuming one of the action alternatives occurs as a result of this study, as well as cumulative impacts, are discussed in Section 4.0. Section 5.0 discusses possible impacts on Endangered and Threatened Species, and Section 6.0 discusses any possible project affects on Essential Fish Habitat as mandated by the Magnuson-Stevens Act. Section 7.0 presents the agencies and entities consulted for this project, and Section 8.0 presents the conclusion of this EA. Section 9.0 provides references. Section 10.0 provides a Bibliography.

2.0 ENVIRONMENTAL COMPLIANCE

For the proposed action to occur, the Corps must comply with all applicable Federal environmental laws and regulations, including, as applicable, the following.

2.1 Federal Laws

National Environmental Policy Act, 42 U.S.C. §§ 4321-4370(f).

The National Environmental Policy Act (NEPA) requires Federal agencies to consider the environmental impacts of their discretionary activities and to disclose potential impacts to the public. NEPA requires all Federal agencies to identify and assess reasonable alternatives to the proposed actions that will restore and enhance the quality of the human environment and avoid or minimize adverse environmental impacts. This EA will ensure that the transfer of ownership of the canal will comply with all NEPA requirements.

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1883.

The 1996 amendments to the Magnuson-Stevens Conservation and Management Act set forth a number of new mandates for the National Oceanic and Atmospheric Administration (NOAA) Fisheries, regional fishery management councils, and other Federal agencies to identify and protect important marine and anadromous fish habitat. The concept is similar to the critical habitat under the Endangered Species Act; however the measures recommended by NOAA Fisheries for other agencies are advisory.

National Historic Preservation Act, 16 U.S.C. § 470 (2006).

The National Historic Preservation Act (NHPA) requires Federal agencies to evaluate the effects of Federal discretionary actions on historical, archeological, and cultural resources. At the Federal level, the Office of Historic Preservation carries out reviews under Section 106. At the state level, the California Environmental Quality Act (CEQA) requires that public agencies consider the effects of their actions on historical resources eligible for listing in the California Register of Historical Resources. A State Historic Preservation Office (SHPO) consultation is not necessary as the undertaking has no potential to cause effects to historic properties, pursuant to 36 C.F.R. § 800.3.

Clean Air Act, 42 U.S.C. §§ 7401-7671 (2006).

Section 118 of the Clean Air Act (CAA) requires that each Federal agency having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in the discharge of air pollutants to comply with all Federal, State, interstate, and local requirements respecting the control and abatement of air pollution. Section 176 of the CAA prohibits the federal government to engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to the state implementation plan (SIP).

Clean Water Act, 33 U.S.C. §§ 1251-1376 (2006).

Section 404 of the Clean Water Act establishes a permit program administered by the U.S. Army Corps of Engineers. Although the Corps must substantively comply with Section 404 of the Clean Water Act, it is not required to obtain a Section 404 permit. This act regulates the discharge of fill material into waters of the United States, including wetlands.

Section 401 of the Clean Water Act states that applicants for a Federal permit allowing activities that may result in a discharge to navigable waters or their tributaries must obtain state

certification that the discharge complies with other provisions of the Clean Water Act, and will not violate State and Federal water quality standards.

Endangered Species Act, 16 U.S.C. §§ 1531-1543 (2006).

The Endangered Species Act of 1973 provides protection for threatened and endangered species. The U.S. Fish and Wildlife Service and NOAA Fisheries determine which species need protection and maintain a list of threatened, endangered, and candidate species, as well as species of concern. Appendix A provides the currently listed species that might occur in the project area according to the agencies mentioned above. Section 5.0 of this document describes why this project will have no affect to these species.

Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1421h (2006).

The Marine Mammal Protection Act of 1972 (MMPA), most recently reauthorized in 1994, established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters. The term “take” is statutorily defined to mean “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.” Harassment was defined under the 1994 amendments as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal in the wild, or has the potential to disturb a marine mammal in the wild by causing disruption to behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. Under the MMPA, the Secretary of Commerce is responsible for the conservation and management of pinnipeds and cetaceans. This authority has been delegated to the NMFS. The MMPA allows for incidental take for other than scientific research and commercial fisheries only after an involved public process.

Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712 (2006).

The Migratory Bird Treaty Act protects and regulates the taking of migratory birds. It sets seasons and bag limits for hunted species and protects migratory birds, their occupied nests, and their eggs.

Rivers and Harbors Act (RHA), 33 U.S.C. § 403 (2006).

Under Section 10 of the Rivers and Harbors Act of 1899, the construction of structures in, over, or under, excavation of material from, or deposition of material into “navigable waters” are regulated by the Corps. Navigable waters of the United States are defined as those waters subject to the ebb and flow of the tide shoreward to the mean high water mark or those that are currently used, have been used in the past, or may be susceptible to use, to transport interstate or foreign commerce. A Letter of Permission or permit is required from the Corps prior to any work being completed within a navigable waterway. The Corps permit authority under the Rivers and Harbors Act of 1899 is not subject to EPA oversight or any other restrictions of the Clean Water Act and, in some cases, the Rivers and Harbors Act alone will apply to activities occurring in waters of the United States.

Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. § 1456 (2010).

Section 307 of the Coastal Zone Management Act either requires certification that the proposed project will comply with the State's Coastal Zone Management Program or a negative determination that the project will not have an effect on coastal resources, as applicable.

2.2 California State Laws

California Environmental Quality Act, Public Resources Code §§ 21000 et seq.

The California Environmental Quality Act (CEQA) applies to actions directly undertaken, financed, or permitted by State lead agencies, and establishes state policy to prevent significant and avoidable damage to the environment. It requires any public agency to disclose the environmental impacts of its projects to the public through appropriate environmental documentation and to mitigate negative environmental impacts.

California Endangered Species Act, Fish and Game Code §§ 2050 et seq.

The California Endangered Species Act (CESA) requires mitigation for impacts to state-listed endangered, threatened and candidate species. CESA mandates that state agencies should not approve projects which would jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy, and requires State lead agencies to consult with the California Department of Fish and Wildlife (CDFW) during the CEQA process. CDFW is required to issue a written finding as to whether a project would jeopardize listed species and to specify reasonable and prudent alternatives that would avoid jeopardy.

Native Plant Protection Act, Fish and Game Code §§ 1900 et seq.

The Native Plant Protection Act requires State agencies to utilize their authority to carry out programs to conserve endangered and rare native plants. The Act prohibits the taking of listed plants from the wild and requires notification of CDFW at least 10 days in advance of any change in land use.

3.0 PROJECT ALTERNATIVES

33 C.F.R. § 320.4(b)(4) and 40 C.F.R. § 230.10(a)

3.1 No Action Alternative

To comply with the National Environmental Policy Act (NEPA), the Corps is required to consider the effects of taking no Federal action as an alternative to disposing of the property in question. The “No Action” Plan defines the “without project” condition. No Action would result in continued Federal ownership of the land that the Corps no longer deems necessary for the navigational purposes for which it was acquired. The Corps would maintain ownership of the OIHTC, including the federal property adjacent to the federal navigation channel. The moratorium on construction in the section of the OIHTC outside of the federal navigation channel would remain in place. The No Action alternative will serve as a baseline to describe existing conditions.

3.2 Action Alternatives

Alternative 1 –Transfer ownership of the Federal property in the OIHTC to the Cities of Alameda and Oakland and remove the moratorium on construction in the section of the OIHTC outside of the Federal navigation channel. The Fruitvale Railroad Bridge is excluded from this property transfer.

Alternative 2 - Transfer ownership of the Federal property in the OIHTC to the Cities of Alameda and Oakland but would still keep the moratorium on construction in the section of the OIHTC outside of the Federal navigation channel.

Alternative 3 –Transfer ownership of the Federal property outside of the Federal channel to the Cities of Alameda and Oakland and remove the moratorium on construction in the section of the OIHTC outside of the Federal navigation channel.

Alternative 4 – Transfer ownership of the Federal property outside of the Federal channel to the Cities of Alameda and Oakland and keep the moratorium on construction in the section of the OIHTC outside of the Federal navigation channel.

3.3 Environmentally Preferred Alternative

The agency preferred alternative is Alternative 1. Transfer ownership of the Federal property in the OIHTC to the Cities of Alameda and Oakland and remove the moratorium on construction in the section of the OIHTC outside of the Federal navigation channel.

4.0 AFFECTED ENVIRONMENT

The assumed without-project conditions serves as the baseline against which the proposed/preferred Action Alternative(s) will be evaluated. Future without-project conditions are likely to be the same as current existing conditions. There is no change in land use anticipated as a result of the proposed action of property transfer. The property along both the Alameda and Oakland sides of the canal is anticipated to remain residential, recreational and industrial/commercial.

Both shorelines along the canal are developed such that the removal of the moratorium on construction would not lead to significant newly developed shoreline. No change in current land use is anticipated as a result of the preferred alternative. Potential effects from future land use modifications or construction would have their own evaluation process.

Alternatives 2, 3 and 4 are lesser permutations of the preferred alternative. For this reason, any effects from proposed actions are anticipated to be greatest for the preferred alternative. Although there are no anticipated changes in land use with the preferred alternative, potential effects to the baseline conditions and cumulative effects are evaluated below.

4.1 Physical Factors

4.1.1. Geology and Soils

The OIHTC is entered via the San Francisco Bay and the Oakland Inner Harbor. The San Francisco Bay occupies a broad north-trending valley approximately 62 miles long and 3 to 14 miles wide. The area surrounding the bay is relatively low and divides the province into northern and southern ranges. Alameda Island, located within the Oakland Inner Harbor, varies in elevation from sea level at the shoreline to approximately 30 to 35 feet above mean sea level (msl) in the central portion of the island.

The geology of the San Francisco Bay area is very complex. The region is underlain by a thick sequence of sedimentary and metamorphic rocks of the Franciscan Assemblage, which have been extensively folded and faulted. Lithologies in this assemblage include shale, greenstone,

greywacke, chert, and serpentine. Bedrock is exposed at the surface in some locations, and covered by younger alluvial or colluvial deposits in other areas. The region is geologically and seismically active, containing young mountain ranges with steep, unstable slopes and large, active fault zones.

Soil at the site consists of loose to densely packed silty sand, with some sand, gravel, lean clay, organic material, and anthropogenic debris (i.e., plastic, wood, concrete, brick, and scrap metal) to a depth of at least 20 feet below the ground surface (bgs). Neither the depth to groundwater nor the direction of groundwater flow has been documented at the site, but the occurrence or movement of groundwater is expected to be tidally influenced. Based on topographic relief, groundwater is expected to occur at a depth of 10 to 15 feet bgs, and likely flows from inland to the Alameda Estuary. The preferred alternative will have no effect on area geology or soils.

4.1.2 Water Resources

The OIHTC is a canal of brackish water suitable for small craft navigation and is influenced by hydrodynamic conditions typical of Central Bay. The Central Bay is a highly dynamic marine region due to strong tidal currents and is most strongly influenced by tidal currents due to its close proximity to the Pacific Ocean. Tidal currents in San Francisco Bay consist of semidiurnal and diurnal partial tides. Two high tides and two low tides occur daily, with unequal amplitudes. The preferred alternative will have no effect on area water resources.

4.2 Water Quality

The OIHTC appears to have enough current to keep it clear without dredging; therefore, the center of the canal is relatively clean. However, as noted in a November 21, 2006 Alameda City Council meeting, some shoaling has occurred around private docks on the Alameda side, especially where there is an outfall. As documented in several investigative efforts, there is contamination in some areas along the edges of the Federal property. This is likely due to the industrial activities over the last 150 years on adjacent properties. The variation in water quality parameters fluctuates less than other areas of the Bay due to the "buffering capacity" of cold ocean waters. Circulation is affected by tides entering the Bay from the Pacific, local winds, basin bathymetry and the local salinity field. The preferred alternative will have no effect on water quality.

4.3 Climate

The overall climate in the project area is dominated by the semi-permanent eastern Pacific high-pressure system centered over the northeastern Pacific Ocean. The high is strongest in summer, when it moves to its northernmost position, which results in strong northwesterly airflow and negligible precipitation. A thermal low-pressure area from the Sonoran-Mojave Desert also causes air to flow onshore during parts of the summer. In winter, the high weakens and moves southwestward toward Hawaii, which allows storms originating in the Gulf of Alaska to reach California. Most precipitation occurs between November and March. The preferred alternative will have no effect on the climate.

4.4 Visual Resources/Aesthetics

Along the Port of Oakland's 19 miles of waterfront are 535 acres of marine terminal facilities, which handle a broad spectrum of import and export cargo. The OIHTC is residential,

recreational and commercial along the Oakland and Alameda waterfronts. No change in land use is anticipated, therefore there will be no effect on existing visual resources from the preferred alternative.

4.5 Cultural Resources

The Corps is required to comply with the historic preservation laws and regulations when considering proposed actions. It is the Corps' responsibility to make a reasonable and good-faith effort to identify historic properties (properties eligible for, or listed in the National Register of Historic Places), within an Area of Potential Effects (APE) that may be affected by the proposed action. Historic properties include, for example, archaeological sites, historic structures, submerged shipwrecks and traditional cultural properties that are determined eligible for listing in the National Register of Historic Places (NRHP). An Area of Potential Effects (APE) is a geographical area in which a project may cause (directly or indirectly) changes in the character or use of a historic property.

A review of project documents, and consideration of any previously identified historic properties as well as those cultural resources not yet evaluated for the National Register of Historic Properties (NRHP), will generally be sufficient to determine whether there are potential effects to such resources. The Corps provides a determination to the State Historic Preservation Officer (SHPO) in accordance with 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act, as amended (NHPA). Section 106 provides the guidelines by which federal agencies meet statutory responsibilities for historic preservation concerns and the needs of federal undertakings.

Because the Oakland Inner Harbor has been maintained and the land and previous disposal sites used for many years, and no new channel or ground-disturbing activities are proposed, the Corps believes it is reasonable not to conduct aquatic or terrestrial surveys for these previously disturbed parts of the APE. In keeping with Corps planning guidance for projects that do not involve new work, we have relied on existing information in the project and cultural resources files. The files revealed that from the 1970's through the 1990's the Corps funded archaeological surveys designed to inventory historic resources for their operating projects in the Oakland Inner Harbor for navigation, maintenance dredging, dredged-material disposal, and for construction.

No known historic properties are located within the OIHTC Federal channel. Historic research indicates that the Oakland Estuary was the location of many historic shipwrecks dating from the 19th Century. Many ships were abandoned, at the end of the Inner Harbor, following the Gold Rush when the maritime trade significantly declined (Corps 1984). During the 1930's a Works Progress Administration (WPA) sponsored project removed obstacles to navigation and cleaned navigable waters of visible obstacles. In the last five years, the USCG promptly marked the sunken Tug Respect with buoys, which is located just west of Park Street Bridge. Its location is also marked on the NOAA navigation chart of that area. There are also the Tug Captain Al, one other sunken vessel and 2 sunken barges in the same area which are not marked. The Corps has removed 2 vessels, the M/V Elizabeth A and the Submarine Chaser Hooker from the channel.

The Corps conducted an updated records search and survey for historic resources in February 2003 and in September 2006. No historic properties listed in the NRHP were identified within the project APE. Previous environmental documents (Corps 1980, 1988; Corps and Port of Oakland 1999) identified no Native American resources in or near the OIHTC and did not find any sites, areas and materials important to Native Americans for religious, spiritual, economic or traditional uses. No areas within the OIHTC are known to be used for gathering, collecting or conducting ceremonies by either groups or individuals on land within or adjacent to the APE appear to be present.

There are two historic properties adjacent to the project APE. The Park Street Bridge and the High Street Bridge are eligible for the NRHP. The bridges are currently owned by Alameda County and within the jurisdiction of the local authorities. These bridges will not be affected by the federal action.

The Cities of Oakland and Alameda are Certified Local Agencies with approved City Development Plans that include historic preservation. The Cities are responsible for California Environmental Quality Act (CEQA) level environmental compliance prior to making discretionary approvals on projects, including Corps Section 10 and Section 404 permits for projects within their respective waterfront areas.

The proposed action will not directly impact or adversely affect any potential prehistoric or historical resources within the APE. Based on the current description, the proposed action would not result in adverse effects or significant impacts to any of the resources located in the project area; therefore, no further investigation or treatment of these resources is recommended.

4.6 Air Quality

The proposed action would not cause any change in the current land use and therefore would not cause any change in current air quality or emissions. With no change in emissions release from the proposed Federal action, pursuant to the Clean Air Act, a conformity analysis with the Bay Area Air Quality Management District (BAAQMD) is not required. The preferred alternative will have no effect on air quality.

4.7 Biology

The Central Bay is a highly dynamic marine region due to strong tidal currents. The benthic substrate is comprised of coarse to fine sediments and rocky outcrops. The dominant benthic species in Central Bay is the clam *Macoma balthica*, particularly in the intertidal areas. Common sub tidal species include the mollusks *Mya arenaria*, *Gemma*, *Musculista senhousia*, and *Venerupis philippinarum*; the amphipods *Ampelisca abdita*, *Grandierella japonica*, and *Corophium sp.*; and the polychaetes *Streblospio benedicti*, *Glycinde sp.*, and *Polydora sp.* The preferred alternative will have no change in land use and no effects on benthic species.

Sacramento winter-run chinook occasionally occur in the Oakland Harbor during migration season (November to May) and the threatened coastal steelhead pass through the area on their way upstream from June through May. Coho salmon also occur in San Francisco Bay during fall months. Central Valley Spring-run chinook may occasionally stray into the Oakland Harbor area while migrating in and out of the Sacramento Delta. The Oakland Harbor is not located within these species' main migration routes and accordingly, few individuals are expected to occur in the Harbor. Please see Chapter 5.0 Endangered and Threatened Species, and Chapter 6.0 Magnuson-Stevens Act Essential Fish Habitat for a detailed description of why the preferred alternative will have no effect on any of these species.

4.8 Noise

The preferred alternative would not cause any change in the current land use and therefore no effect on current noise levels is anticipated.

4.9 Land Use

The land affected by the proposed Federal action lies within a heavily urban environment. The canal is predominantly industrial on the Oakland side and predominantly residential, with some business and commercial use, on the Alameda side. Half of the property is within the City of Alameda and half within the City of Oakland as the jurisdictional boundary runs down the centerline of the channel. While use of the property is within Oakland and Alameda city limits. There is no anticipated change in land use attributable to the preferred alternative, and therefore no effects.

4.10 Transportation and Utilities

The property is surrounded by numerous heavily trafficked thoroughfares such as Park Street, Fruitvale Avenue and High Street. Alameda Avenue in Oakland is used by commercial traffic; the Alameda side sees mostly residential traffic. BART and AC Transit are the main sources of public transportation provided by the County of Alameda. The Fruitvale Avenue Railroad Bridge has not been used in many years. The State of California oversees the bridges and main highways while the U.S. Coast Guard regulates bridges that span navigable waterways. There is no anticipated change in traffic patterns or usage as a result of the proposed action.

The canal is used for small craft navigation. The preferred alternative is not anticipated to effect either vehicular or small watercraft traffic at the site.

4.10.2 Utilities

The preferred alternative will have no effect on the use of utilities.

4.11 Hazardous Materials

There are no records that the DOD has ever stored or used chemical or petroleum products on the property at any time during the canal's existence. A records search by Environmental Data Resources, Inc. (2003) does indicate that potential contaminants do exist on a portion of the Federal property and adjacent properties. Most of these contaminants have been attributed directly to industrial activities of adjacent property owners.

The canal is a public waterway and is subject to potential contamination from passing vessels and from potential spills resulting from the refueling of craft from privately owned docks that extend into the canal. A refueling station (Park Street Landing) exists on adjacent property. There is also potential for contamination of the canal from spills and discharges that occur outside the OIHTC boundaries which can be introduced into the canal through tidal action, and from adjacent properties via storm water discharge.

The Corps has conducted preliminary testing which revealed 5 sites that have concentrations of mercury, arsenic, lead, chromium, and cadmium (Chemicals of Concern) that exceed human health standards. Based on the preliminary test results further testing to determine the extent of the presence of chemicals of concern was conducted. Sample locations for these tests are given

in Appendix B. The test results can be found in the Oakland Inner Harbor Tidal Canal (OIHTC) Site Investigation Report, USACE, June 2009.

Transfer of the property will not affect the environmental condition of the property or the ability to take action should any action be necessary. For this reason the preferred alternative will have no effect on hazardous materials.

4.12 Recreation

The canal is currently used for small craft navigation, which includes recreational traffic. With no anticipated change in land use, shore based recreational activities would not be impacted by the property transfer. The preferred alternative will have no effect on the recreational use of the property.

4.13 Socioeconomic Factors

As stated above, the land affected by the preferred alternative lies within a heavily urban environment. The canal is predominantly industrial on the Oakland side and predominantly residential, with some business and industry, on the Alameda side. The Port of Oakland is a major point of entry for goods from Asia and other Pacific Rim trading partners. The surrounding area is highly industrial with major shipping for trucking and railroad hubs.

4.13.1 Population

The United States census, at <http://factfinder.census.gov>, shows the 2010 population for Oakland, California was 390,724, while the 2010 population for Alameda, California was 73,812. The preferred alternative will have no effect on these populations.

4.13.2 Income

The United States census, at <http://factfinder.census.gov>, shows that in the City of Oakland in 2014, only 36.6% of its households had an income of more than \$75,000 a year. In the same year the City of Alameda had 51.0% of its households earning an income of more than \$75,000 a year. The preferred alternative will have no effect on the incomes of either city.

4.13.3 Public Services

Public services such as surface streets, police, fire protection, ambulance, water, sewage and refuse are currently provided by the Cities of Oakland and Alameda. The preferred alternative will have no effect on the area's public services.

4.14 Cumulative Impacts

As described above there are no effects to the human environment anticipated from the preferred alternative for any of the factors evaluated. The remaining alternatives are lesser permutations of the preferred alternative and therefore are also anticipated to not have any effects on the human environment.

There are no anticipated effects or impacts from the proposed alternatives.

5.0 ENDANGERED AND THREATENED SPECIES

The United States Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries have provided the Corps with lists of federally endangered, threatened and species of concern that may occur in the vicinity of, or be affected by, the proposed action (see Appendix D). Some species identified, but not discussed in this section, do not have habitat in the OIHTC area and will not be impacted.

5.1 Fish

The Sacramento River winter run Chinook salmon, *Oncorhynchus tshawytscha*, and the Steelhead trout, *Oncorhynchus mykiss*, migrate upstream through the estuary starting in late August. Juvenile steelhead usually spend one or two years in freshwater before migrating to sea. Downstream migration occurs in late winter and early spring. The threat to the productivity and existence of these species is due to water diversion projects on the Sacramento River, destruction of upstream spawning habitat, fresh-water intake pump entrainment of juvenile and larvae fish, and effluent discharge. None of these conditions are currently present or would change due to property transfer. Therefore, no impacts are anticipated due to the preferred alternative.

The planktivorous delta smelt, *Hypomesus transpacificus*, occurs only in the Bay-Delta Estuary. The species is mainly found on the open surface and shoal waters of marsh channels and in Suisun Bay. The aquatic habitat in Richmond quadrant is designated as critical habitat for this species, however, this species is not commonly found downstream of Suisun Bay and certainly not in Oakland Harbor. Therefore, no impacts are anticipated due to the preferred alternative.

The green sturgeon, *Acipenser medirostris*, is listed as threatened. This species migrates throughout the Bay-Delta as a long-lived and late-maturing adult. Little is known about the life history of this species, although it is likely that they migrate through the Bay-Delta in the fall and winter to spawn in the spring. Activities in the OIHTC are not anticipated to change upon property transfer. Therefore, no impacts are anticipated due to the preferred alternative.

Tidewater goby, *Eucylogobis newberryi*, occurs in coastal lagoons and brackish bays at the mouth of freshwater streams. There is no habitat for this species in the OIHTC area. Therefore, no impacts are anticipated due to the preferred alternative.

The Pacific herring, *Clupea pallasii*, is not a listed species, but it is ecologically, commercially and recreationally important. Pacific herring are mobile, pelagic fish; they are expected to be able to avoid impact areas throughout the year, except during times of spawning. Due to habitat constraints and location, no spawning is expected to occur in the OIHTC. Therefore, no impacts are anticipated due to the preferred alternative.

5.2 Reptiles and Amphibians.

The threatened Alameda whipsnake, *Masticophis lateralis euryxanthus*, the threatened California red-legged frog, *Rana aurora draytonii*, and California tiger salamander, *Ambystonna californiense*, and all listed reptile and amphibian species of concern reported in the OIHTC area, do not have suitable habitat in the OIHTC and do not inhabit the marine environment. Therefore, no impacts are anticipated due to the preferred alternative.

Based on available distribution data, sea turtles are unlikely to occur in the project area since their preferred foraging and nesting habitat are generally located in ocean waters south of Baja California through Costa Rica and in the western Atlantic Ocean (except *Chelonia agazzi*) surrounding the southern states. Therefore, no impacts are anticipated due to the preferred alternative.

5.3 Birds

The closest roost site for the endangered California brown pelican, *Pelecanus occidentalis californicus*, is known to be at Brooks Island near Richmond Inner Harbor.

The bald eagle, *Haliaeetus leucocephalus*, is listed as threatened. Limited in distribution to North America and northeastern Siberia, bald eagles may be observed anywhere in this range during migrations, and wintering birds are frequently seen away from their breeding areas. In California, they winter throughout the state if prey is available.

In the San Francisco Bay, the endangered California Least Tern, *Sterna antillarum browni*, primarily roosts at the Alameda Naval Air Station and does not forage north of the Berkeley Marina. The direct OIHTC area does not support typical California least tern habitat; however there is potential for these terns to forage in the area.

The Federal government lists the western snowy plover, *Charadrius alexandrinus nivosus*, as threatened. The western snowy plover breeds primarily on coastal beaches from southern Washington to southern Baja California, Mexico. There is no known nesting habitat in the OIHTC area.

Ridgway's rail, *Rallus longirostris obsoletus*, (formerly the California clapper rail) is only found in salt marshes around San Francisco, San Pablo, and Suisun Bays. The rail inhabits tidal salt marshes, especially where they include tidal channels, which are preferred foraging habitat during low tides. Breeding occurs from March to August. There is no known suitable habitat in the OIHTC.

The action of property transfer would not impact foraging, roosting, mating or migration patterns of birds. Therefore, no impacts are anticipated due to the preferred alternative.

5.4 Invertebrates

There is no known habitat for the listed invertebrates. Therefore, no impacts are anticipated due to the preferred alternative.

The Dungeness crab, *Cancer magister*, is not a listed species, but it is ecologically, commercially and recreationally important. There is no known habitat for them in the immediate OIHTC vicinity. Therefore, no impacts are anticipated due to the preferred alternative.

5.5 Mammals

Harbor seals, *Phoca vitulina*, and California sea lions *Zalophus californianus* may infrequently be found in the area of the OIHTC. The proposed real estate transfer will not impact the available habitat. Therefore, no impacts are anticipated due to the preferred alternative.

The only other threatened or endangered mammal reported in the project area is the salt marsh harvest mouse *Reithrodontomys raviventris*. This species and all the listed species of concern reported in the project area USGS quads are terrestrial and not known to have habitat in the OIHTC area. Therefore, no impacts are anticipated due to the preferred alternative.

5.6 Plants

None of the listed plant species (see Appendix A) will be impacted by this real estate transfer.

6.0 MAGNUSON-STEVENSON ACT ESSENTIAL FISH HABITAT

The Essential Fish Habitat (EFH) mandates of the Magnuson-Stevens Act represent a new effort to integrate fisheries management and habitat management by stressing the ecological relationships between fishery resources and the environments upon which they depend. The EFH consultation process will ensure that Federal agencies explicitly consider the effects of their actions on important habitats, with the goal of supporting the sustainable management of marine fisheries. The National Marine Fisheries Service (NOAA Fisheries) administers the EFH (see Appendix B). No EFH consultation is necessary as the property transfer will have no effect on Essential Fish Habitat.

The OIHTC is located in a designated EFH for species managed with the Coastal Pelagics, Pacific Coast Salmon, and Pacific Groundfish Fishery Management Plans (FMPs). Five Evolutionary Significant Units (ESU) of salmonids: the endangered Sacramento River winter-run chinook salmon ESU *Oncorhynchus tshawytscha*, the threatened Central Valley spring-run chinook salmon ESU *Oncorhynchus tshawytscha*, the threatened Central California Coast steelhead ESU *Oncorhynchus mykiss*, the threatened Central Valley steelhead ESU *Oncorhynchus mykiss*, and the Central Valley fall/late fall-run chinook salmon ESU *Oncorhynchus tshawytscha* (a candidate species) are reported as possibly occurring in the Oakland Inner Harbor Channel. The proposed real estate transfer will not impact any habitats in the area. Therefore, no impacts are anticipated.

7.0 COORDINATION

A list of Federal, State, and local environmental agencies with whom this project has been coordinated with includes, but is not limited to:

Bay Area Air Quality Management District
Bay Conservation and Development Commission
California Department of Fish and Wildlife
California State Historic Preservation Office
California State Lands Commission
California State Resources Agency
National Oceanic and Atmospheric Administration Fisheries
San Francisco Bay Regional Water Quality Control Board
United States Coast Guard
United States Environmental Protection Agency
United States Fish and Wildlife Service
United States Maritime Administration
City of Alameda
City of Oakland
Alameda County

8.0 CONCLUSION

Based on review of the preferred alternative, it has been determined that the subject action will have no impacts. It has also been determined that transfer of federal property adjacent to the federal navigation channel and the ending of the moratorium on construction in that area will have less than significant impacts. This project will not jeopardize the continued existence of threatened or endangered species or adversely affect any critical habitat, any known or unknown cultural resources. An Environmental Impact Statement is not necessary for this project and instead a Finding of No Significant Impact (FONSI) shall be prepared.

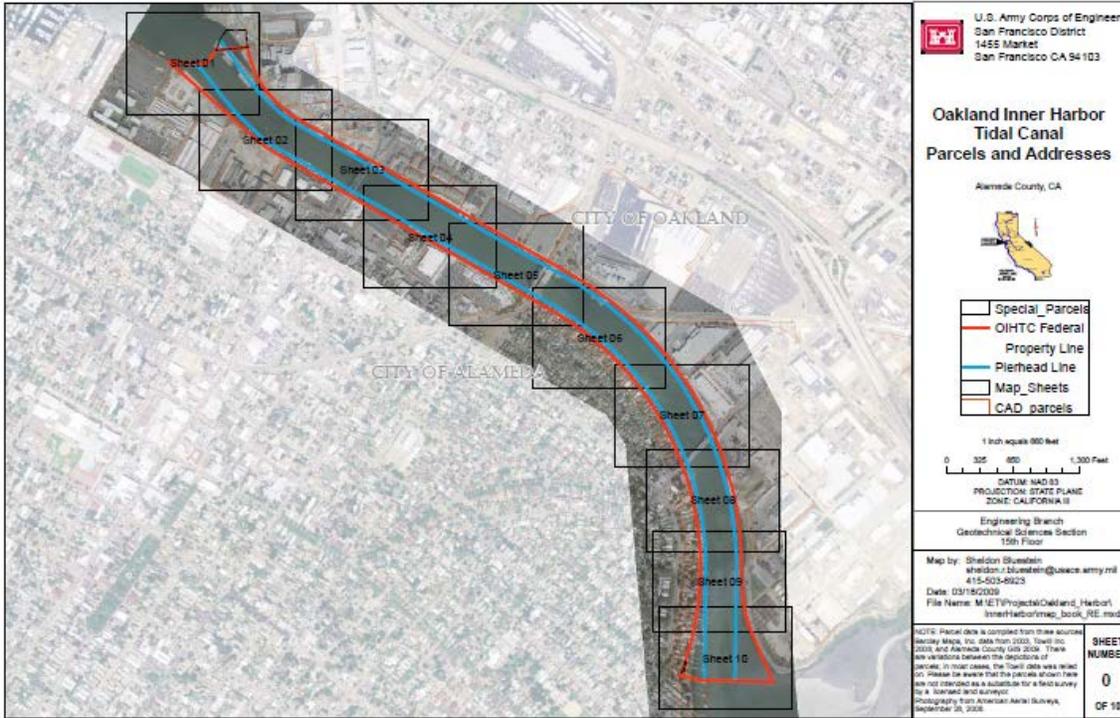
9.0 REFERENCES

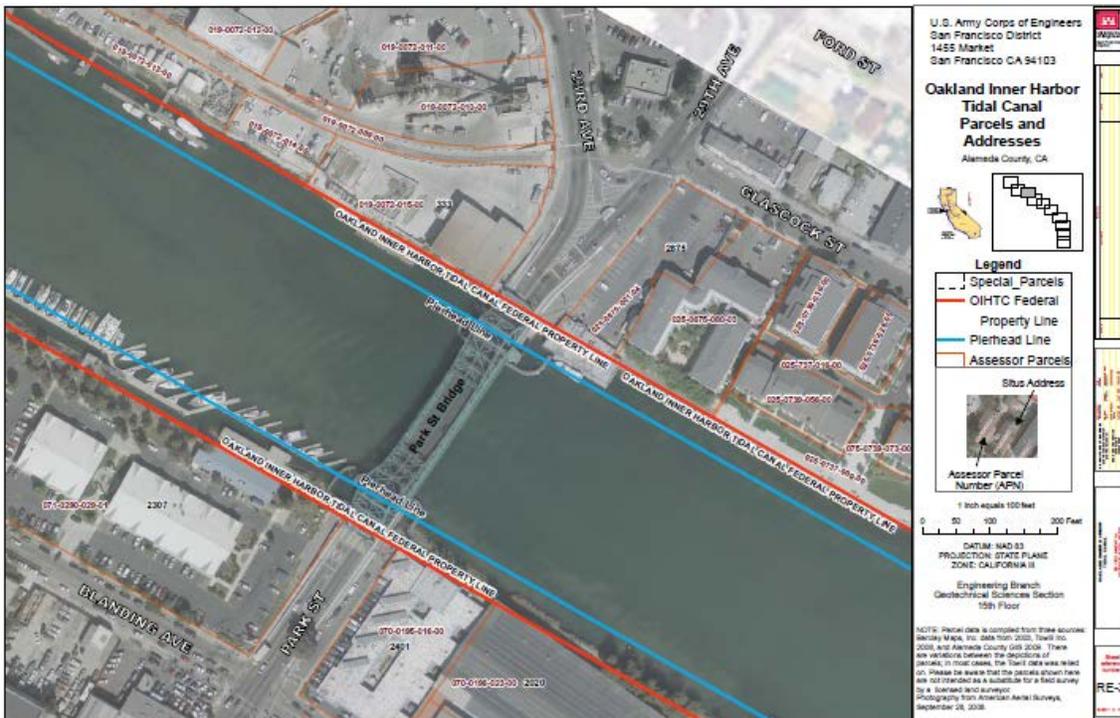
CDFG (California Department of Fish and Game). 2001. California's Living Marine Resources: Status Report. <http://www.dfg.ca.gov/mrd/status/>. Accessed April 22, 2005.

CDFG. 2003. Atlas of the Biodiversity of California. <http://atlas.dfg.ca.gov/>. Accessed February 1, 2005.

APPENDIX A

MAP WITH PARCELS







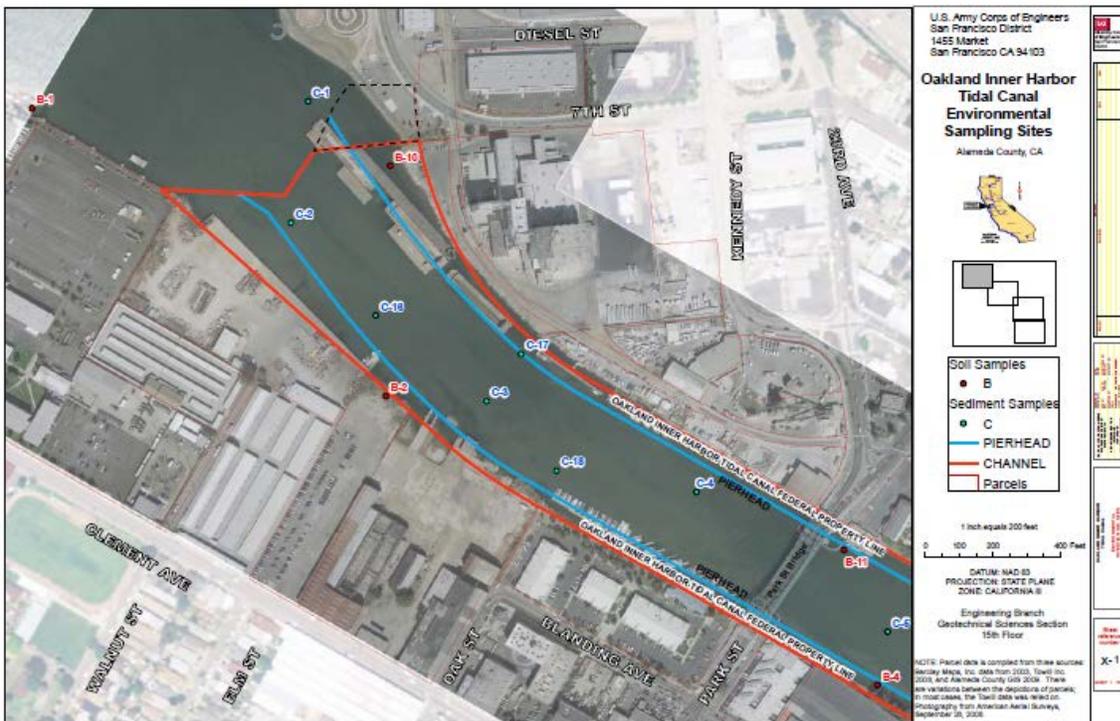
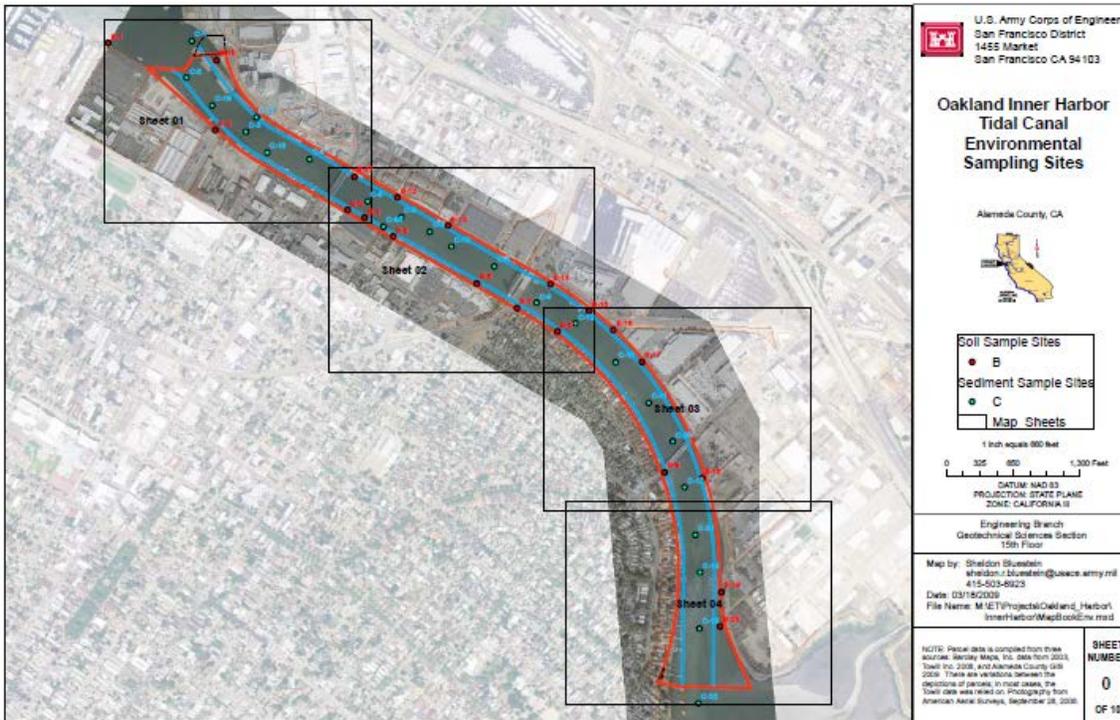


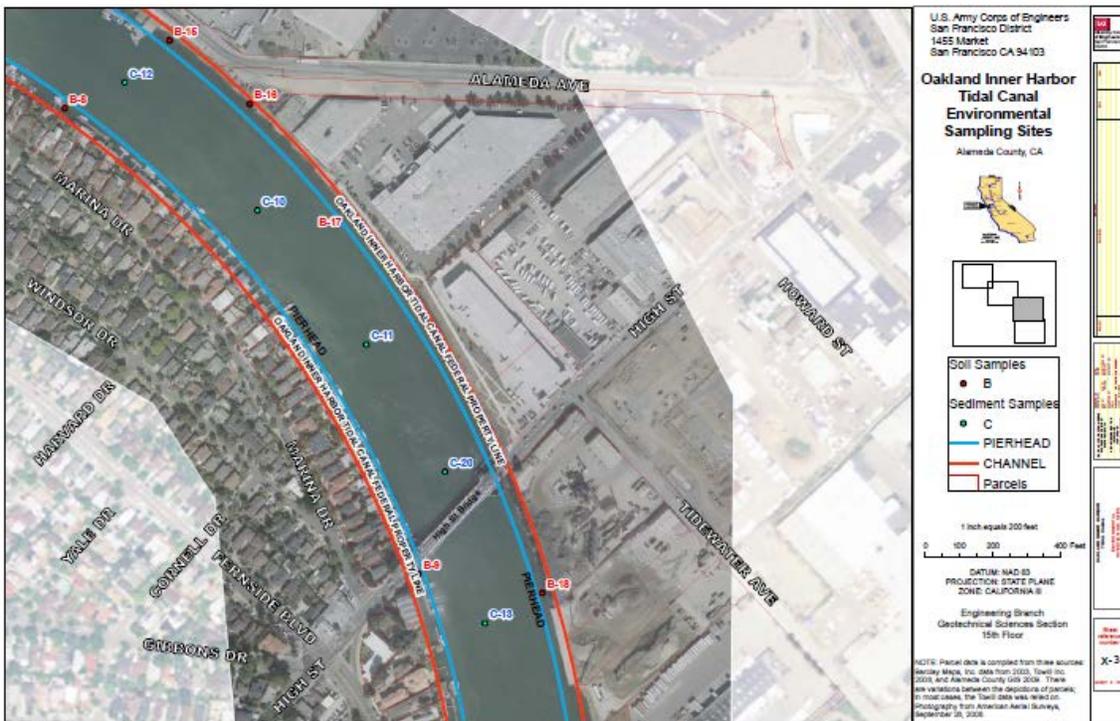
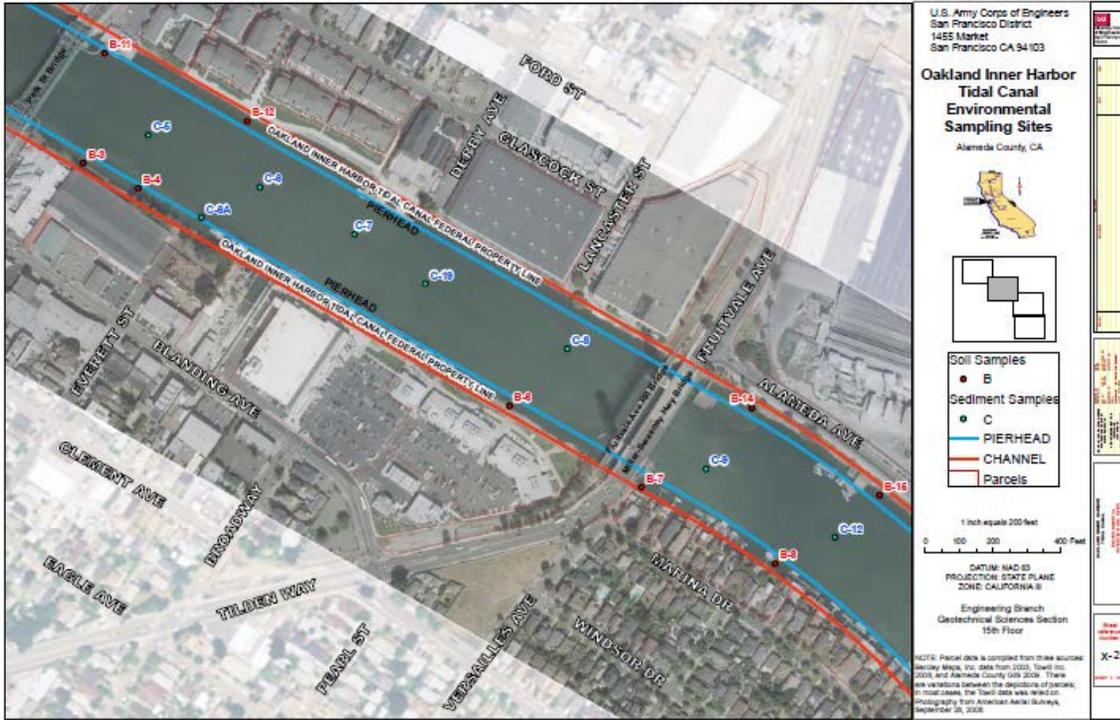




APPENDIX B

BASELINE TESTING MAP







APPENDIX C

ENDANGERED SPECIES LISTS



United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish and Wildlife
650 CAPITOL MALL, SUITE 8-300 SACRAMENTO, CA 95814
PHONE: (916)930-5603 FAX: (916)930-5654
URL: kim_squires@fws.gov



Consultation Code: 08FBDT00-2016-SLI-0114
Event Code: 08FBDT00-2016-E-00070
Project Name: Oakland Inner Harbor Tidal Canal

April 04, 2016

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: <http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment

Official Species List

Provided by:

San Francisco Bay-Delta Fish and Wildlife
650 CAPITOL MALL
SUITE 8-300
SACRAMENTO, CA 95814
(916) 930-5603
[http://kim_squires@fws.gov](mailto:kim_squires@fws.gov)

Expect additional Species list documents from the following office(s):

Sacramento Fish and Wildlife Office
FEDERAL BUILDING
2800 COTTAGE WAY, ROOM W-2605
SACRAMENTO, CA 95825
(916) 414-6600

Consultation Code: 08FBBDT00-2016-SLI-0114

Event Code: 08FBBDT00-2016-E-00070

Project Type: LAND - DISPOSAL / TRANSFER

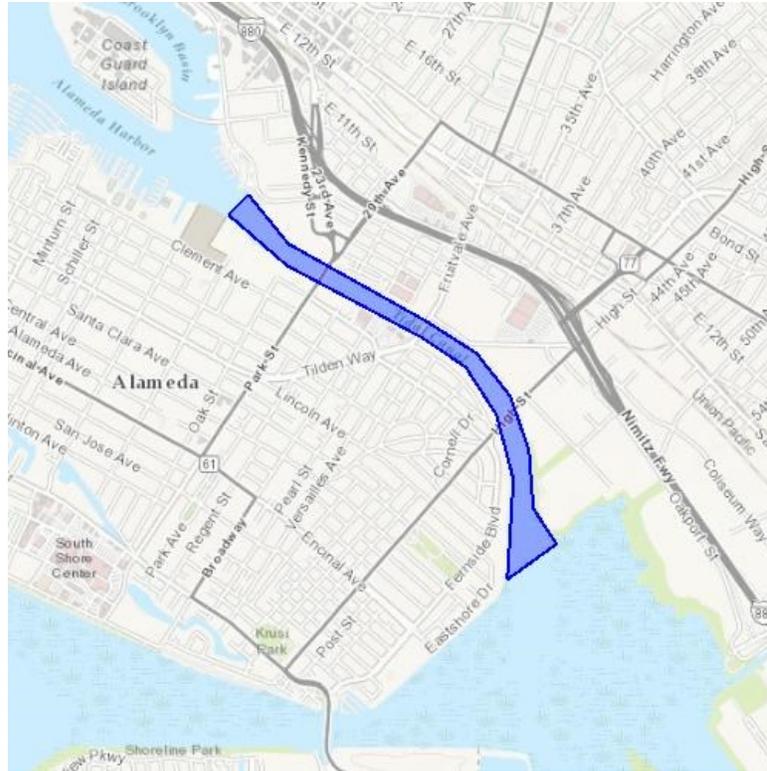
Project Name: Oakland Inner Harbor Tidal Canal

Project Description: The Federal Government intends to divest itself of ownership of the Oakland

Inner Harbor Tidal Canal (OIHTC). The OIHTC is located within the cities of Oakland and Alameda. It is a nearly 2 mile long stretch of open water and shoreline that begins approximately 1,800 feet northwest of the Park Street Bridge and terminates at San Leandro Bay.

Please Note: The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.

Project Location Map:



Project Coordinates: MULTIPOLYGON (((-122.24246978759764 37.774615805204256, -122.23877906799316 37.77213949976112, -122.23023891448975 37.76850969670358, 122.22757816314699 37.767050940611725, -122.22556114196776 37.764642233850665, -122.22448825836182 37.761419193645686, -122.22491741180421 37.75646561597495, -122.2217845916748 37.75822994194451, -122.22328662872314 37.75996029769667, -122.22354412078856 37.76287806082098, -122.224702835083 37.765592155744706, 122.22684860229491 37.767763359972506, -122.23002433776854 37.76935779748217, -122.23869323730467 37.773157169570695, -122.24126815795897 37.77566736187935, -122.24246978759764 37.774615805204256)))

Project Counties: Alameda, CA

Endangered Species Act Species List

There are a total of 15 threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Amphibians	Status	Has Critical Habitat	Condition(s)
California red-legged frog (<i>Rana draytonii</i>) Population: Entire	Threatened	Final designated	
California tiger Salamander (<i>Ambystoma californiense</i>) Population: U.S.A. (Central CA DPS)	Threatened	Final designated	
Birds			
California Clapper rail (<i>Rallus longirostris obsoletus</i>) Population: Entire	Endangered		
California Least tern (<i>Sterna antillarum browni</i>)	Endangered		
western snowy plover (<i>Charadrius nivosus ssp. nivosus</i>) Population: Pacific coastal pop.	Threatened	Final designated	
Fishes			

Delta smelt (<i>Hypomesus transpacificus</i>)	Threatened	Final designated	
Population: Entire			
steelhead (<i>Oncorhynchus (=salmo) mykiss</i>) Population: Northern California DPS	Threatened	Final designated	
Flowering Plants			
Pallid manzanita (<i>Arctostaphylos pallida</i>)	Threatened		
Presidio clarkia (<i>Clarkia franciscana</i>)	Endangered		
Robust spineflower (<i>Chorizanthe robusta var. robusta</i>)	Endangered	Final designated	
Insects			
Bay Checkerspot butterfly (<i>Euphydryas editha bayensis</i>) Population: Entire	Threatened	Final designated	
Callippe Silverspot butterfly (<i>Speyeria callippe callippe</i>) Population: Entire	Endangered		
San Bruno Elfin butterfly (<i>Callophrys mossii bayensis</i>) Population: Entire	Endangered		

Mammals			
Salt Marsh Harvest mouse <i>(Reithrodontomys raviventris)</i> Population: wherever found	Endangered		
Reptiles			
Alameda whipsnake <i>(Masticophis lateralis euryxanthus)</i>	Threatened	Final designated	
Population: Entire			

Critical habitats that lie within your project area

There are no critical habitats within your project area.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
FEDERAL BUILDING, 2800 COTTAGE WAY, ROOM W-2605
SACRAMENTO, CA 95825
PHONE: (916)414-6600 FAX: (916)414-6713



Consultation Code: 08ESMF00-2016-SLI-1186
Event Code: 08ESMF00-2016-E-02590
Project Name: Oakland Inner Harbor Tidal Canal

April 04, 2016

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, under the jurisdiction of the U.S. Fish and Wildlife Service (Service) that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Please follow the link below to see if your proposed project has the potential to affect other species or their habitats under the jurisdiction of the National Marine Fisheries Service:

http://www.nwr.noaa.gov/protected_species/species_list/species_lists.html

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required

to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: <http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment

Official Species List

Provided by:

Sacramento Fish and Wildlife Office
FEDERAL BUILDING
2800 COTTAGE WAY, ROOM W-2605
SACRAMENTO, CA 95825
(916) 414-6600

Expect additional Species list documents from the following office(s):

San Francisco Bay-Delta Fish and Wildlife
650 CAPITOL MALL
SUITE 8-300
SACRAMENTO, CA 95814
(916) 930-5603
[http://kim_squires@fws.gov](mailto:kim_squires@fws.gov)

Consultation Code: 08ESMF00-2016-SLI-1186

Event Code: 08ESMF00-2016-E-02590

Project Type: LAND - DISPOSAL / TRANSFER

Project Name: Oakland Inner Harbor Tidal Canal

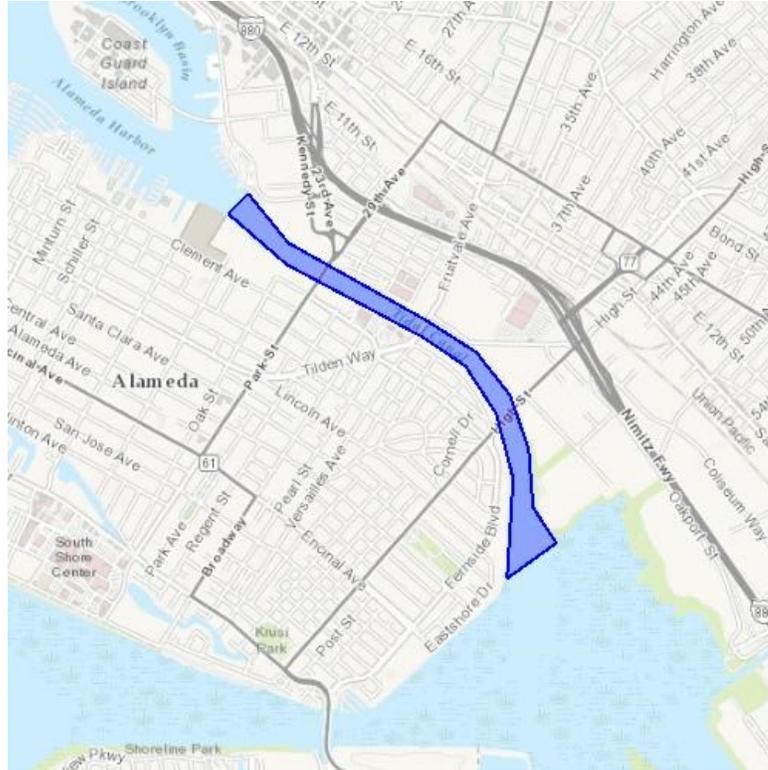
Project Description: The Federal Government intends to divest itself of ownership of the Oakland

Inner Harbor Tidal Canal (OIHTC). The OIHTC is located within the cities of Oakland and Alameda. It is a nearly 2 mile long stretch of open water and shoreline that begins approximately

1,800 feet northwest of the Park Street Bridge and terminates at San Leandro Bay.

Please Note: The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.

Project Location Map:



Project Coordinates: MULTIPOLYGON (((-122.24246978759764
37.774615805204256, -
122.23877906799316 37.77213949976112, -122.23023891448975 37.76850969670358,
122.22757816314699 37.767050940611725, -122.22556114196776
37.764642233850665, -
122.22448825836182 37.761419193645686, -122.22491741180421
37.75646561597495, -
122.2217845916748 37.75822994194451, -122.22328662872314 37.75996029769667, -
122.22354412078856 37.76287806082098, -122.224702835083 37.765592155744706,
122.22684860229491 37.767763359972506, -122.23002433776854
37.76935779748217, -
122.23869323730467 37.773157169570695, -122.24126815795897
37.77566736187935, -
122.24246978759764 37.774615805204256)))

Project Counties: Alameda, CA

Endangered Species Act Species List

There are a total of 17 threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Amphibians	Status	Has Critical Habitat	Condition(s)
California red-legged frog (<i>Rana draytonii</i>) Population: Entire	Threatened	Final designated	
California tiger Salamander (<i>Ambystoma californiense</i>) Population: U.S.A. (Central CA DPS)	Threatened	Final designated	
Birds			
California Clapper rail (<i>Rallus longirostris obsoletus</i>) Population: Entire	Endangered		
California Least tern (<i>Sterna antillarum browni</i>)	Endangered		
western snowy plover (<i>Charadrius nivosus ssp. nivosus</i>) Population: Pacific coastal pop.	Threatened	Final designated	
Crustaceans			

Vernal Pool fairy shrimp <i>(Branchinecta lynchi)</i>	Threatened	Final designated	
--	------------	------------------	--

Population: Entire			
--------------------	--	--	--

Fishes

Delta smelt (<i>Hypomesus transpacificus</i>) Population: Entire	Threatened	Final designated	
---	------------	------------------	--

steelhead (<i>Oncorhynchus (=salmo) mykiss</i>) Population: Northern California DPS	Threatened	Final designated	
--	------------	------------------	--

Tidewater goby (<i>Eucyclogobius newberryi</i>) Population: Entire	Endangered	Final designated	
---	------------	------------------	--

Flowering Plants

Pallid manzanita (<i>Arctostaphylos pallida</i>)	Threatened		
--	------------	--	--

Presidio clarkia (<i>Clarkia franciscana</i>)	Endangered		
---	------------	--	--

Robust spineflower (<i>Chorizanthe robusta var. robusta</i>)	Endangered	Final designated	
--	------------	------------------	--

Insects

Bay Checkerspot butterfly <i>(Euphydryas editha bayensis)</i> Population: Entire	Threatened	Final designated	
Callippe Silverspot butterfly <i>(Speyeria callippe callippe)</i> Population: Entire	Endangered		
San Bruno Elfin butterfly <i>(Callophrys mossii bayensis)</i> Population: Entire	Endangered		

Mammals			
Salt Marsh Harvest mouse <i>(Reithrodontomys raviventris)</i> Population: wherever found	Endangered		
Reptiles			
Alameda whipsnake <i>(Masticophis lateralis euryxanthus)</i> Population: Entire	Threatened	Final designated	

Critical habitats that lie within your project area

There are no critical habitats within your project area.

APPENDIX D

PUBLIC NOTICING

The following public notice was mailed to all property owners within a 300 foot radius of the OIHTC.

**PUBLIC NOTICE
OF AVAILABILITY**

PUBLIC NOTICE DATE:
July 22, 2016

EXPIRATION DATE:
August 12, 2016

PROJECT NAME:
Oakland Inner Harbor Tidal Canal

SUBJECT

Public Notice of Availability (NOA) of a draft Environmental Assessment (EA). The U.S. Army Corps of Engineers San Francisco District (Corps) has prepared, pursuant to the National Environmental Policy Act, an EA for the proposed Oakland Inner Harbor Tidal Canal property divestment. The above referenced draft EA is available to the public at the following website under "Oakland Inner Harbor Tidal Canal Draft EA": bit.ly/usace-notice.

PROPOSED ACTION

The Corps intends to divest itself of ownership of a parcel of real property known as the Oakland Inner Harbor Tidal Canal (OIHTC), located within the cities of Oakland and Alameda. The OIHTC is a navigable waterway, approximately 85 acres in size, 400-feet wide, and nearly 2 miles long. A narrow strip of shoreline on each side of the canal is also included in the property footprint. The Federal property begins approximately 1,800 feet northwest of the Park Street Bridge and terminates at the mouth of San Leandro Bay. This proposed action solely consists of a real estate property transaction; no ground disturbance or on-site activities are proposed or anticipated. Details and maps are included in the draft EA.

Written comments and/or a request for a paper copy of the draft EA may be submitted to the Corps environmental coordinator, Edward Keller, at the San Francisco District Office, 415-503-6841, email: Edward.P.Keller@usace.army.mil. This draft EA is open for a 15-day public comment period.

Comments must be received by August 12, 2016.

APPENDIX E

COMMENTS AND RESPONSIVENESS SUMMARY

Responsiveness Summary
 Environmental Assessment
 Oakland Inner Harbor Tidal Canal
 Surplus Property Divesture
 Dated: May 2016

This summary documents the written comments received on the Environmental Assessment (EA) during the comment period of July 22, 2016 through August 12, 2016. The written comments received follow this summary.

Commenter	Comment Summary	Comment Response Taken
Aileen N Hodgkin	Requested a paper copy of the EA.	Paper copy was provided. No effect on the EA.
Jerry D. Andersen	Requested a paper copy of the EA.	Paper copy was provided. No effect on the EA.
Lucy Seereiter	Concern with how the parcel will be sub divided by the City of Alameda. This is beyond the scope of the EA	This was discussed with Ms. Seereiter and her concerns were forwarded to the City of Alameda. No effect on the EA.
Edward R. Payne	Expressed his support for this transfer and how it will hopefully streamline the permit process.	Comment noted. No effect on the EA
Charles & Judy Woo	Expressed interest in the transfer and requested a paper copy of the EA.	Paper copy was provided. No effect on the EA.
Paul Mabry	Expressed his support for moving forward with the transfer process but also expressed concerns on the sub division of the property. Detailed a history of homeowner improvements made along the Alameda side of the canal which likely have prevented erosion and perhaps federal costs over time. He wanted to ensure that homeowner contributions have not been overlooked.	Homeowner contributions, may have aided in the protection of the canal banks, however any of these improvements are not a part of this actual transfer. No direct effect on the EA. Comment was forwarded to the City of Alameda.

None of the comments received had a direct effect on the EA as written. The nature of the concerns expressed had to do primarily with how the property will be sub divided and conveyed by the City of Alameda. This action is beyond the scope of this document and therefore no changes are to be made to the EA which was made available to the public for review. No comments were received that would indicate any impacts from this federal action that would warrant the preparation of an EIS.

This concludes the public review process for this federal action and a Finding of No Significant Impact (FONSI) will be prepared for signature.

Keller, Edward P RAO @ HQ

From: Alleen Hodgkin [REDACTED]
Sent: Wednesday, July 27, 2016 4:21 PM
To: Keller, Edward P RAO @ HQ
Subject: [EXTERNAL] Draft EA - Oakland Inner Harbor Tidal Canal

Yes, please forward a paper copy of the draft EA to me at:

Alleen N. Hodgkin
3243 Fernside Blvd.
Alameda, CA 94501

Thank you,

Alleen N. Hodgkin

Keller, Edward P RAO @ HQ

From: Jerry Andersen [REDACTED]
Sent: Thursday, July 28, 2016 11:03 AM
To: Keller, Edward P RAO @ HQ
Subject: [EXTERNAL] Oakland Inner Harbor Tidal Canal Draft EA

Sir,

I hereby request a paper copy of the subject document
be mailed to me at:

Jerry D. Andersen
3017 Marina Drive
Alameda, CA 94501

Thanks in advance,

jer

Keller, Edward P RAO @ HQ

From: [REDACTED]
Sent: Monday, August 08, 2016 11:14 AM
To: Keller, Edward P RAO @ HQ
Cc: [REDACTED]
Subject: [EXTERNAL] Property Transfer of OIHTC

Attn: Mr. Keller

Sir:

I am in favor of the transfer of the OIHTC property, and I believe this will address a number of issues.

I have lived on the Estuary for 40+ years and I have applied for 4 permits over the years. Each permit, red-tape, expense & hoops one has to jump through has progressively gotten worse over the years. Because of this, more and more people are opting for doing their work without permits, hoping they will not get caught. I have also seen people give up on getting permits, including docks that have deteriorated to the point they have literally fallen in the water. (I personally have been wanting to improve our boathouse, but have not done so, largely because of the permit issue.)

My hope is this transfer could lead to homeowners being able to maintain, repair and improve their property legally, to the benefit of all concerned.

Respectfully,

Capt. Edward R. Payne

Keller, Edward P RAO @ HQ

From: Charles Woo [REDACTED]
Sent: Monday, August 08, 2016 11:44 AM
To: Keller, Edward P RAO @ HQ
Subject: [EXTERNAL] Please forward a paper copy of the draft Environmental Assessment.

Hello,

My name is Charles Woo. My wife Judy and I are the owners of the property at 3033 Marina Dr., Alameda, CA 94501. We received your public notice of availability of the draft Environmental Assessment (EA) regarding the divestment of parcels of real property at the Oakland Inner Harbor Tidal Canal. Since we are the owners of a property along the canal, we are greatly interested in this real estate transaction, especially the parcel behind our house! Please let us know when this real estate transaction is available and when it would be feasible to act. Also, we would like to request a paper copy of the draft EA be sent to us at the above address. If there are any questions, please do not hesitate to contact us. Thank you.

Sincerely,

Charles and Judy Woo

Keller, Edward P RAO @ HQ

From: [REDACTED]
Sent: Thursday, August 11, 2016 11:36 PM
To: Keller, Edward P RAO @ HQ
Subject: [EXTERNAL] Public Comment to Environmental Assessment to the Oakland Tidal Canal
Attachments: PM Comments to USACE - Alameda Estuary.pdf

Dear Mr. Keller,
Please find my comments attached regarding the Environmental Assessment for the Oakland Inner Harbor Tidal Canal.
If you have any difficulties in opening or viewing the attached pdf file, please let me know as soon as possible.
Thank you for this opportunity.
Sincerely,
Paul

Paul H Mabry

Certified Federal Surveyor

3351 Fernside Blvd

Alameda, CA 94501
253-678-2229

Paul Mabry

3351 Fernside Blvd.

Alameda, CA

U.S. Army Corps of Engineers, San Francisco District
Attn: Corps environmental coordinator Edward Keller
San Francisco District Office
1455 Market Street
San Francisco, CA 94103
415-513-6841
Edward.P.Keller@usace.army.mil

Re: Invitation for Public Comment in the Matter of the Oakland Inner Harbor Tidal Canal
Environmental Assessment

Dear Mr. Keller:

As an affected homeowner and on behalf of the residential homeowners fronting the Alameda side generally of the Oakland Inner Harbor Tidal Canal (OIHTC), I am writing to comment on my support for and observations concerning the Environmental Assessment (EA) and anticipated Finding of No Significant Impact for the planned surplus property divestiture of the Oakland Inner Harbor Tidal Canal. Specifically, I highlight the beneficial role of fronting owners, both historically and in the future. Secondly, I mention the importance of conveying property with equitable, surveyed, and locatable boundaries.

THE ALAMEDA EXPERIMENT

On August 30th, 1912, Stuart Rawley recorded a map of the subdivision of Waterside Terrace, thereby creating about half of the approximately 93 current fronting canal lots in Alameda.¹ My home is one of these historic lots. A few months later, on June 3, 1913, the Secretary of War issued a license to all fronting owners granting them permission to occupy and build structures for “wharf purposes.”² It is worth noting that a license is by definition revocable at will and that

¹ Map of Waterside Terrace, recorded August 30th, 1912, official records of Alameda County, CA.

² Army Corps of Engineers, San Francisco District, Environmental Assessment Oakland Inner Harbor Tidal Canal Surplus Property Divestiture, § 1.6.2, <http://www.spn.usace.army.mil/Library/Freedom-of-Information-Act/FOIA-Hot-Topics/>.

Paul Mabry

3351 Fernside Blvd.

Alameda, CA

a licensee acquires no real property interests merely by virtue of exercising a right to occupy, build or maintain the property of another.³ This joint invitation to build on and enjoy the waterfront was a huge success – by 1939 a majority of the lots were occupied and the owners had constructed many waterfront docks, wharves, bulkheads and similar improvements.⁴ Although the density of waterfront homes has increased slightly over the years, the fronting properties and the use of the waterfront has remained largely unchanged for the past 100 years.⁵ The residential nature of this Alameda community today continues much as it has since it was subdivided in 1912. Other Alameda waterfront communities repeat a similar refrain – land was made available with the express invitation to build homes and maintain waterfront improvements and this tradition has survived and thrived, at least until the 2000 moratorium.

With military and industrial uses climaxing after the second World War, the island evolved and then declined economically for several decades as manufacturing needs moved elsewhere. This period resulted in some of the particularly bad uses of waterside property although generally not within the residential portions of the Alameda frontage. Much has been made of the failure of a few owners, primarily industrial in nature, to adequately maintain or protect the natural resources entrusted them as waterfront owners.⁶ However, it is important to remember the contributions that fronting residential property owners have made over the years to the public good.

Residents of Alameda fronting the canal have for many years, built and maintained bulkheads, seawalls and retaining walls to prevent the castings of the canal dredging from subsiding, eroding or impairing the functionality of the canal. Unlike the Oakland side of the canal, the

³ *Id.* See also Brian Garner, *Black's Law Dictionary* (8th ed., West 2004).

⁴ Earth Sciences and Map Library, University of California, Berkeley, 1939 aerial photograph image No. BUT-1939_259-59.

⁵ A review of current tax parcel maps shows that many lots have been narrowed or reconfigured or have tandem lots front to back that increase the density of residences somewhat from the original lot configuration of 1912.

⁶ Environmental Assessment Oakland Inner Harbor Tidal Canal Surplus Property Divestiture, §1.7.2 (referencing contamination on a portion of an industrial site).

Paul Mabry

3351 Fernside Blvd.

Alameda, CA

Alameda side has not been armored and covered with “rip-rap.” Instead, the homeowners themselves have generally created and installed a system of retaining walls, seawalls and bulwarks to separate the uplands from the submerged lands. The miles of improvements privately maintained over these many years represent a significant investment. Furthermore, the continued maintenance of these structures tends to stabilize the landward improvements as well. For illustration, imagine if no improvements had ever been built and no effort made to maintain the shoreline... It is reasonably foreseeable that many of the upland lots would have slumped towards or eroded into the canal and consequently the canal and the San Francisco Bay could have unnecessarily suffered increased infill through erosion, reliction and associated sedimentary processes associated with the strong tidal currents sweeping through the canal. And, assuming such erosion was desirous of being prevented, a significant public expense would have been needed to stabilize and protect the Alameda side of the canal in a similar fashion to that presently existing on the Oakland side. Consequently, the fronting Alameda homeowners, in addition to enjoying water access, also contributed favorably to defray the public expense of ongoing maintenance on property owned by the federal government.

This contribution seems to be overlooked in the EA.⁷ While it may be technically true that an expired license places a “structure” in the category of trespass, it is equally true that these structures play an important and ongoing role in maintaining the integrity of the shoreward/waterward boundary. A recognition of the partnership role that homeowners have in good faith played for these many decades would not be undeserved. I look forward to effectively managing my responsibilities as an owner of the canal just as my predecessors in interest took seriously their responsibilities as licensees.

⁷ *Id.* § 1.7.2 (concluding, “after the Permitting Moratorium, most of these real estate licenses have expired leaving most of the existing structures technically in trespass.”).

Paul Mabry

3351 Fernside Blvd.

Alameda, CA

The Waterfront Home Owner’s Association of Alameda (WHOAA) has also taken a proactive role in promoting homeowner cooperation with the City and local agencies. For over 10 years, the WHOAA has alerted homeowners to the moratorium and possible changes to applicable regulations. All of the members of the WHOAA understand the benefits and responsibilities that come with ownership of waterfront property. They are actively committed to ending the moratorium and allowing the needed maintenance, repair and replacement of these vital but seemingly unrecognized structures that stabilize the land and promote the ongoing vitality of the tidal canal. Led by their executive committee, the WHOAA will continue to provide education and outreach to the community and lead the way forward in promoting responsible stewardship of the future tidal canal parcels.

ENDING THE MORATORIUM

The Environmentally Preferred Alternative in the EA proposes ending the moratorium in conjunction with a transfer of Federal property to Alameda.⁸ The EA envisions “that the City would, in turn, transfer ownership of individual parcels to the respective adjoining property owners.”⁹ The City has published notice of the same and held a public hearing to consider public comment.¹⁰ The City has since received public comment and conditionally approved a tentative map that lays out, roughly, the lotting pattern that would be used in a conveyance of lots to the adjoining owners.¹¹ I fully support ending the moratorium and have no preference on whether the land remains in federal ownership or is conveyed to the adjoining owners.¹²

⁸ Environmental Assessment Oakland Inner Harbor Tidal Canal Surplus Property Divestiture § 3.3, 10.

⁹ *Id.* at § 1.7.2, 6.

¹⁰ Ltr. From City of Alameda to fronting lot owners (June, 2016), *Notice of Availability and of a Public Hearing to Consider a Mitigated Negative Declaration for the Oakland Inner Harbor Tidal Canal Tentative Map, Estuary Zoning Amendment, and Property Acquisition and Transfer*.

¹¹ Tidal Canal Tentative Map Tract 8337, <https://alamedaca.gov/tidal-canal-project>.

¹² Ownership of the land makes little difference as long as a method exists to obtain permits. The permits required before construction or maintenance will likely be comparable no matter who or what entity owns the underlying lands.

Paul Mabry

3351 Fernside Blvd.

Alameda, CA

Assuming the Preferred Alternative is chosen and the land is divided and distributed to the adjoining owners, I am concerned that such a conveyance be done equitably and according to lawful procedures.

EQUITABLE DISTRIBUTION REQUIRED

In conveying a grant of land in fee to adjoining riparian owners, the grantor must allocate and convey such lands as are just and equitable.¹³ The Supreme Court set forth some basic rules: New lands should be divided in accordance with the proportionate amount of new frontage as compared with their existing lot frontage.¹⁴ Upon dividing the new waterward limits into segments, the lot lines were to be drawn from the existing lot corners and extended out to the new segment ends.¹⁵ In other words, large existing lots get larger pieces and smaller lots get smaller pieces – each in accordance with the proportion of whatever the new total frontage of waterfront is measured to be.

I call attention to the fact that when new lots are created, they must adjoin the old lots. This may seem self evident, for if a lot be “adjoining” it must be collinear with another line. However, to clarify the point: The lot corners of existing lots must be used as the starting point for each new line that will extend out to the water. The tentative map and all other information made available to the public to date do not make this requirement of equity clear. The current tentative map, understandably not a final or accurate map, appears to show many of the new lot lines drawn at arbitrary places – apparently to fit physical features observed in aerial photography but not relating to the existing legal title lines of the current waterfront lots.¹⁶

¹³ *Johnston v. Jones*, 66 U.S. 209 (1862)

¹⁴ *Id.* at 222

¹⁵ *Id.* at 223 (noting that, “to complete the division, lines are to be drawn from the points at which the proprietors respectively bounded on the old, to the points thus determined [on the new].”)

¹⁶ For example, the Tentative Map, Sheet 10, shows a Lot 95 to be 32 feet in width. Although not shown on the map, the adjoining (existing) lot is only 30 feet in width. This excess of two feet is not “adjoining” and could lead to

Paul Mabry

3351 Fernside Blvd.

Alameda, CA

Of course there is host of supporting case law and federal regulations promulgated since 1862.¹⁷

As a Certified Federal Surveyor, I have been called upon to apply many of these equitable principles in similar surveys I have done over the years. I have completed such surveys for the U.S. Fish and Wildlife Service, the Bureau of Land Management, the U.S. Forest Service, the Corps of Engineers and other military branches of the Department of Defense. My work has taken me to Oregon to Crimms Island on the Columbia River, to Washington on the Black River, Willapa Bay and Puget Sound, to various tribes across the Pacific Northwest and in many other places and agencies in the western United States.

CONCLUSION

As the EA process moves towards completion, I would encourage the responsible parties to continue to reach out to the owners, to WHOAA, and to those who have offered their expertise to assist in any way we can. Who knows what hurdles may lie ahead? Together we are stronger. We the owners look forward to continuing the important role we have long played in keeping our homes well maintained and the canal a wonderful public asset.

Sincerely,



Paul Mabry
2016.08.11
23:24:41 -07'00'

Paul Mabry
Homeowner and Certified Federal Surveyor No. 1109
(via Email)

irreparable harm if conveyed in this configuration. Other lots share this apparent anomaly between lot corners on existing lots.

¹⁷ U.S. Dept. of the Interior, 2009 *Manual of Surveying Instructions*, § 8-126, 208 (Gov. Printing Office 2009) http://www.cfeds.org/docs/sml/ManualOfSurveyingInstructions2009_060414.pdf, ("Partitioning or the division of accretions must result in equitable apportionment and is achieved where the results place the accretions in front of the basic holding. If a selected method fails to do this, an alternate method, such as those discussed in § 8-133 through 8-145 should be selected.")

See also *Id.* ("Any riparian owner, including the Government, is entitled to accreted or relict lands *in front of* their basic holdings, in the same relative proportions to neighboring parcels as was established by earlier survey). See also *Rule for Establishing Boundaries of Riparian Claims in the North Half of the Bed of Red River, Oklahoma*, 50 Pub. Lands Dec. 216 (1923). Note however that various state laws and doctrines of equity may also apply in establishing side boundaries.

ENCLOSURE 7
RESPONSIVENESS SUMMARY

**Responsiveness Summary
Environmental Assessment
Oakland Inner Harbor Tidal Canal
Surplus Property Divesture**

Dated: May 2016

This summary documents the written comments received on the Environmental Assessment (EA) during the comment period of July 22, 2016 through August 12, 2016. The written comments received follow this summary.

Commenter	Comment Summary	Comment Response Taken
Aileen N Hodgkin	Requested a paper copy of the EA.	Paper copy was provided. No effect on the EA.
Jerry D. Andersen	Requested a paper copy of the EA.	Paper copy was provided. No effect on the EA.
Lucy Seereiter	Concern with how the parcel will be sub divided by the City of Alameda. This is beyond the scope of the EA	This was discussed with Ms. Seereiter and her concerns were forwarded to the City of Alameda. No effect on the EA.
Edward R. Payne	Expressed his support for this transfer and how it will hopefully streamline the permit process.	Comment noted. No effect on the EA
Charles & Judy Woo	Expressed interest in the transfer and requested a paper copy of the EA.	Paper copy was provided. No effect on the EA.
Paul Mabry	Expressed his support for moving forward with the transfer process but also expressed concerns on the sub division of the property. Detailed a history of homeowner improvements made along the Alameda side of the canal which likely have prevented erosion and perhaps federal costs over time. He wanted to ensure that homeowner contributions have not been overlooked.	Homeowner contributions, may have aided in the protection of the canal banks, however any of these improvements are not a part of this actual transfer. No direct effect on the EA. Comment was forwarded to the City of Alameda.

None of the comments received had a direct effect on the EA as written. The nature of the concerns expressed had to do primarily with how the property will be sub divided and conveyed by the City of Alameda. This action is beyond the scope of this document and therefore no changes are to be made to the EA which was made available to the public for review. No comments were received that would indicate any impacts from this federal action that would warrant the preparation of an EIS.

This concludes the public review process for this federal action and a Finding of No Significant Impact (FONSI) will be prepared for signature.

OAKLAND INNER HARBOR TIDAL CANAL ENVIRONMENTAL BASELINE STUDY SURPLUS PROPERTY DIVESTITURE

Alameda County, California
Fiscal Year 2016



Source: Esri, DigitalGlobe



U.S. Army Corps of Engineers

Environmental Section B

San Francisco District

August 2016

Table of Contents

1.0 Introduction.....	3
1.1 Objective/Purpose.....	3
1.2 Methodology.....	4
2.0 Site/Property Location	4
3.0 General Site Settings.....	7
3.1 Current Uses of the Property and Adjoining Properties.....	7
3.2 Past Uses of the Property and Adjoining Properties	8
3.2.1 Oakland Shoreline	8
3.2.2 Alameda Shoreline	9
3.3 Current or Past Use of the Surrounding Area.....	9
3.4 Geologic, hydro-geological, hydrologic, or topographic conditions	9
3.5 Facility Information.....	10
3.6 Roads:.....	10
4.0 Investigation Results and Observations	11
4.1 Hazardous Material and Petroleum Products	11
4.1.1 Adjacent Property Owners	13
4.1.2 Boat Traffic within the Canal	14
4.1.3 Storm Water Discharge Points.....	14
4.2 Internal Observations of Facilities.....	14
4.3 External Observations.....	14
4.4 Property Classification	15
4.5 Disclosure of Non CERCLA Issues	16
5.0 Environmental Sampling.....	16
5.1 Soil Sampling	16
5.2 Sediment Sampling.....	16
5.3 Environmental Standards.....	17
6.0 Findings and Conclusions	18
7.0 References	19

1.0 Introduction

1.1 Objective/Purpose

The U.S. Army Corps of Engineers (USACE) purchased a 1.8-mile strip of land between the Cities of Oakland and Alameda for the construction of what is still known as the Oakland Inner Harbor Tidal Canal (OIHTC). The construction of the OIHTC occurred from 1875 to 1902. After its completion, the USACE allowed adjacent property owners, under permit, to build piers and open structures within a fifty foot wide strip on each side of the channel. As it is now, the OIHTC is still owned and maintained by USACE and its centerline marks the boundary between the Cities of Oakland and Alameda. In keeping with current government policy of releasing excess government owned property back to the public sector, the USACE intends to transfer the property to the Cities of Oakland and Alameda or another designated public agency.

Before the property can be transferred, it is important to determine the current environmental condition of the property so that full disclosure can be made upon transfer. The purpose of this Environmental Baseline Study (EBS) is to document the current conditions.

The objective is to classify the OIHTC parcel into one of the DoD property categories to facilitate transfer to civilian use. For this parcel the categories have been applied to the entire parcel. The property classification categories are:

Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).

Category 2: Areas where only release or disposal of petroleum products has occurred.

Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

Category 5: Areas where release, disposal, and/or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken.

Category 6: Areas where release, disposal, and/or migration of hazardous substances has occurred, but required actions have not yet been implemented.

Category 7: Areas that are not evaluated or require additional evaluation.

1.2 Methodology

This EBS was prepared based upon currently available information and reports. Phase I and Phase II Environmental Sites Assessments were conducted by USACE (USACE, 2014). Add references here for December 2014 Final document. In order to insure that the information in the site assessment document was thorough and complete, the following guidelines were used:

- ASTM E 1527-94, Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process;
- Engineering Regulation 1165-2-132, Hazardous, Toxic, and Radioactive Waste (HTRW) Guidance for Civil Works Projects;
- Engineering Circular C 1105-2-206, Project Modifications for Improvement of the Environment.

The site assessments relied on research into historical records and documents such as the Sanborne Insurance Maps, land deeds and titles showing ownership of adjacent properties, past and current land usage of those properties, existing Environmental Impact reports, and sources of any potential contamination from these adjacent properties that could have had an adverse impact on the Canal. As part of this search, the USACE hired Environmental Data Resources, Inc. to conduct a review of regulatory agency databases for any historical incidents, such as fuel or chemical spills or releases within a 1-mile distance from the centerline of the Canal (EDR 2003).

In addition to published information, the USACE conducted a door-to-door Survey in May 2003 and June 2004 within the adjacent residential and commercial properties to support and/or augment the results of the historical research and to close any information gaps that may exist on current land usage. If no one was available to complete the questionnaire at a property, a copy of the survey form was left at that address for them to complete and mail into the USACE Sacramento District Office.

Based on information gathered, soil and sediment samples were collected to determine the presence or absence of constituents of concern. Surface drainage from adjacent properties was carefully considered when choosing sample locations. Along with sampling for soil and sediment chemistry, a geophysical survey was conducted.

2.0 Site/Property Location

The OIHTC is a navigable waterway, approximately 85 acres in size, 400-feet wide, and nearly 2 miles long. A narrow strip of shoreline on each side of the canal, approximately 50 feet wide, is included in the property footprint. The Federal property begins approximately 1,800 feet northwest of the Park Street Bridge and terminates at the mouth of San Leandro Bay, see Figures 1 and 2.

The High Street Bridge, the Park Street Bridge and the Miller-Sweeney Bridge span over the OIHTC, are currently owned by Alameda County, and are not part the proposed action. The Fruitvale Avenue railroad bridge, which spans the canal (adjacent to the Miller-Sweeney Bridge), and the footings for the High Street Bridge, the Park Street Bridge and the Miller-Sweeney Bridge, are Federal property and will not be transferred. The Corps will retain the responsibility for maintaining the railroad bridge in accordance with Congressional decisions.

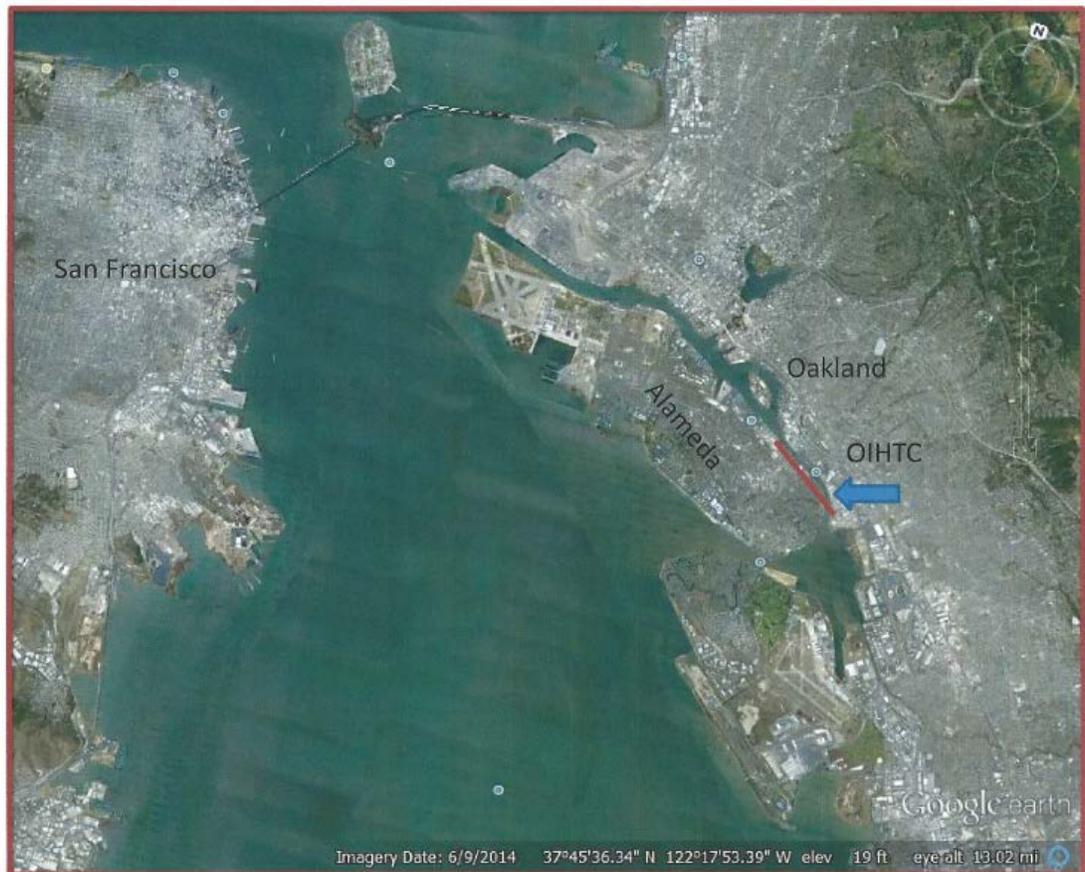


Figure 1 – Location of Oakland Inner Harbor Tidal Canal

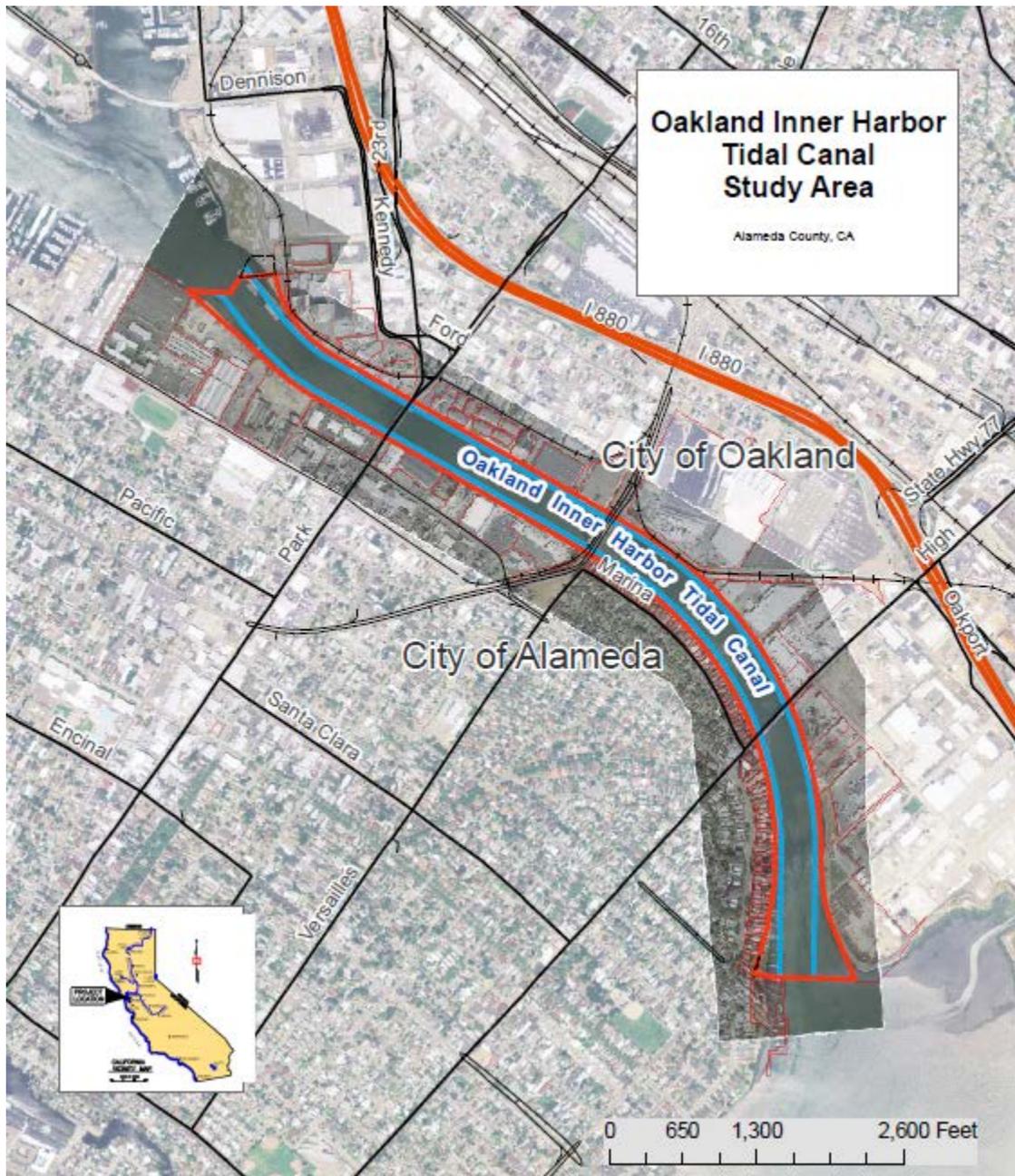


Figure 2 – Aerial Photo of OIHTC

3.0 General Site Settings

The OIHTC was part of the plan conceived by Colonel G. H. Mendell, San Francisco District Engineer 1871-1895, for harbor improvements to the tidal inlet between Oakland and Alameda. Oakland was the first harbor to receive attention by the Corps of Engineers. Commercial ships could navigate as far east as Government Island, where the Estuary narrowed to an unnavigable channel. The channel ended a few hundred yards further east, whereupon a peninsula connected Alameda with Oakland. Most of the area bordering the Inner Harbor was marshlands that became the Oakland Harbor. The OIHTC provided a connection between the tidal basin and San Leandro Bay.

In 1884, the Federal Government took ownership of the OIHTC and commenced dredging operations to create the channel that is known as the OIHTC. Soon after the canal was constructed, adjacent property owners began to encroach on the Federal property by constructing wharfs and docks. On June 3, 1913, the Federal Government issued a license to all owners of property adjacent to the canal. This license granted these property owners permission “. . . to occupy, with open-work, nonpermanent structures for wharf purposes, on the portions of the strip of US property fronting their respective properties and situated between the pier head and bulkhead lines approved January 20, 1913, without special lease or charges of any kind. . . .” The rights granted by this license were “. . . revocable at any time when this area may again be required for purposes of navigation. . . .” In 1929, the pier head and bulkhead lines were combined thus rendering the original license invalid. Regardless of the question of validity of the 1913 license, any existing license would have expired automatically upon transfer of that particular adjacent parcel. Prior to the Regulatory Moratorium, the Corps issued several easements and licenses to construct, repair and maintain structures along the OIHTC, including boathouses and docks along the Alameda side of the canal.

3.1 Current Uses of the Property and Adjoining Properties

The Federal Government has never utilized the canal since it was constructed other than to remove debris from the waterway that posed a hazard to navigation. The term utilization in this context means that the government has never built any structures on the property and has never used the area for storage of any type of material.

The main usage of the canal has been by privately owned watercraft or by watercraft used by adjacent commercial properties to transport their products. Although there was no visual confirmation of active commercial usage during the four USACE site visits, the mooring docks for the commercial barges appear to be in good repair. The deepest portion of the canal is approximately 18 feet which restricts large ships from using the canal as a passage between San Francisco and San Leandro Bays.

Three forms of current research were done to evaluate the site. These were 1) hiring Environmental Data Resources, Inc. (EDR), a professional research organization that specializes in conducting environmental studies, 2) performing two non-intrusive site evaluations on foot and by boat, and 3) conducting interviews and surveys of the property owners and/or tenants on the adjoining properties.

The adjoining properties along the Alameda portion of the canal are approximately 50% residential and 50% commercial usage. Commercial activities include but are not limited to boat repair shops, marinas, a shopping center, warehouses, a restaurant, and a convalescent home. The adjoining properties along the Oakland portion of the canal are 100% commercial usage. The three houses on the Oakland side which were not deeded and were not considered residential usage for this report have been removed. Commercial activities include but are not limited to sand and gravel operations, warehouses, boat dealership and marinas.

3.2 Past Uses of the Property and Adjoining Properties

Historical research was conducted by USACE project team members at Oakland and Alameda Public Libraries, University of Berkeley Library, Corps of Engineers San Francisco and Sacramento District map and real estate files and County of Alameda Assessors Office. Air Photographs on file in the San Francisco District offices were also evaluated for property usage. Sanborne maps for the site were collected for early property usage and at 10 year intervals to check for changes in property use.

The result of the study indicated that the type of property usage did not change through time. Residential properties remained residential and commercial properties remained commercial through time.

3.2.1 Oakland Shoreline

Since the 1913 license mentioned above, a total of 22 residential structures have encroached on the Oakland side of the canal. As of February 25, 1960, the City of Oakland declared all these structures public nuisances as well as health and safety hazards and requested the Federal Government notify the occupants that they were trespassers. Subsequently, the City of Oakland demolished all condemned structures that were entirely or partially built on city property. Three structures located at 3221, 3223 and 3225 Alameda Avenue were not removed by the City because they were situated entirely on Federal property and the City did not have the authority to remove them.

USACE determined that the three Alameda Avenue structures did not have any redeeming historical significance and that they were, in fact, health and safety hazards. In February and March of 2005 USACE served the owners of these structures with notice to remove them within 120 days. Pursuant to Consent Decrees of December 2007, the owners of the structures agreed to remove the structures in accordance with all federal, state, and local laws and regulations. These three structures were subsequently demolished by the owners.

3.2.2 Alameda Shoreline

Residential Activities

There are several encroachments on the Alameda side of the canal. These encroachments consist of docks and boathouses that are attached to adjacent parcels and some are not entirely situated on Federal land. There are approximately 93 residential parcels adjacent to the canal and most of these properties contain structures accessing the canal. Most of the property owners received easements and licenses from USACE to construct the existing structures. However, after the Permitting Moratorium, most of these real estate licenses have expired leaving most of the existing structures technically in trespass.

Commercial Activities

Similar to the residential area, there are a few structures in the commercial area on the Alameda side of the Federal property (Park Street Marina, Dutra Construction dock, and Stone Boat Yard docks), which were constructed under real estate licenses from USACE.

The property located at 2235 and 2241 Clement Avenue adjacent to the canal is owned by Francis Collins. The former tenant on this property, Nelson's Marine, conducted sand blasting operations using silica and nickel slag blast grit. Other previous tenants slag blasted with copper and other abrasives. These activities impacted a portion of the OIHTC on Federal property.

3.3 Current or Past Use of the Surrounding Area

Uses of the areas surrounding the OIHTC have been relatively constant over time. The surrounding areas on the Alameda side of the canal are predominantly residential. The residential, commercial and industrial properties that adjoin the canal are sited within this larger residential setting. The surrounding area of the Oakland side of the canal is much more industrial/commercial in nature.

3.4 Geologic, hydro-geological, hydrologic, or topographic conditions

The site is underlain by the Pleistocene Merritt Sand, which consists of unconsolidated deposits of sand, silt, and clay. The most recent material, Young Bay Mud, is currently being deposited within the canal and adjacent basins. The results of the Geophysical work indicate that very little of the Young Bay Mud is actually being retained within the canal. Portions of some of the adjacent properties contain artificial fill material, most of which was dredged from local sources. The general topography is relatively flat with typical elevations ranging from 8 to 12 feet above mean sea level. The regional topography slopes gently to the north or northwest, which may be a reflection of the location of the site on the northern side of the Franciscan Synform. The Hayward Fault lies approximately 10 miles to the northwest and is the closest known active fault to the site. For a more extensive discussion on the local geology and hydrogeology refer to Figuers, 1998.

The canal straddles the boundary between the Oakland sub-area and the Central sub-area of the San Francisco Basin. The boundaries of the Central sub-area are based on the presence of the Young Bay Mud. The boundary between the Central sub-area and the Oakland sub-area

represents an arbitrary demarcation between areas where underlying deposits are primarily alluvial fan/continental deposits (Oakland sub-area) and where the underlying deposits contain the classical sedimentary section as described in Figures, 1998. Deeper aquifers (300-700 feet) are poorly defined and are most productive in channel areas within the buried alluvial fan deposits such as the Alameda-Fitchburg Trend. The Merritt Sand was the most prolific shallow aquifer (up to 60 feet deep below ground surface) historically and was the primary supply for the western section of Oakland until the water quality started to decline in the 1890's due to contamination from septic systems and increasing salt content created by groundwater withdrawal. Shallow groundwater in the vicinity of the canal tends to be brackish and considered unsuitable for drinking water purposes.

3.5 Facility Information

The property to be transferred is a waterway and does not have any government owned buildings or facilities on it. Although this is a waterway there are utilities to consider. Other improvements on site include utility lines which cross the canal and outlets for storm water discharge on both sides of the canal. The utility lines are buried beneath the canal bottom and the crossings are well marked. The storm water discharge pipes are generally small with the exception of the City of Oakland outfall located to the south of the Fruitvale Bridge. None of these improvements are owned, operated, or maintained by the Federal Government. These storm drain locations were taken into consideration when determining sampling locations.

There are no water supply, sewage disposal or fire protection features on the OIHTC parcel.

3.6 Roads:

Included in this classification are bridges. There are three major bridges that cross the canal between the Cities of Oakland and Alameda. The High Street Bridge, the Park Street Bridge and the Miller-Sweeney Bridge span over the OIHTC, are currently owned by Alameda County, and are not part the proposed action. The Fruitvale Avenue railroad bridge, which spans the canal (adjacent to the Miller-Sweeney Bridge), and the footings for the High Street Bridge, the Park Street Bridge and the Miller-Sweeney Bridge, are Federal property and will not be transferred. The Corps will retain the responsibility for maintaining the railroad bridge in accordance with Congressional decisions.

The Fruitvale Avenue Railroad Bridge, which is currently not in use, is inspected annually by the USACE Sacramento District. Bridge maintenance is performed by the County of Alameda. The USACE Periodic Inspection reports indicate that portions of the Fruitvale Avenue Railroad Bridge have been repainted as part of the annual maintenance. Report 5, dated 15 January 1982 describes at least 5 separate occasions where different parts of the bridge were repainted. However, no mention is made as to whether the old paint was removed or what type of paint was used. The original maintenance records are on file with the County of Alameda.

As defined above there are no roadways as a part of this disposal action.

4.0 Investigation Results and Observations

As stated above, the property to be disposed of is a waterway with limited shoreline areas. As such there were no storage tanks, odors, pools of liquids, drums, hazardous wastes/waste petroleum products, unidentified substance containers, electrical hazards, radiological hazards, PCB containing equipment nor medical/biohazardous wastes observed on the OIHTC property. Without being able to visually inspect a submerged portion of the parcel to be disposed of, assumptions had to be made about potential impacted areas.

4.1 Hazardous Material and Petroleum Products

The evaluation and literature research for the Phase I Baseline Study were performed in May 2003 and June 2004 by the Environmental Engineering Section of the U. S. Army Corps of Engineers, Sacramento District (USACE). The door-to-door survey was done by PK Consultants, Inc. located in Oakland, California, and the Corridor Study was performed by EDR. EDR conducted a review of regulatory agency databases for a 1-mile distance from the centerline of the canal. The results of this study are documented in their Corridor Study Report (EDR, 2003).

The records search included the following databases:

- CERCLIS-NFRAP: Comprehensive Environmental Response, Compensation and Liability Information System – No Further Remedial Action Planned.
- RCRIS-LQG: Resource Conservation and Recovery Information System - Large Quantity Generator.
- ERNS: Emergency Response Notification System - records and stores information on reported releases of oil and hazardous substances.
- AWP: California DTSC's Annual Work Plan - identifies known hazardous substance sites targeted for cleanup.
- CAL-SITES: Formerly known as ASPIS, this database contains both known and potential hazardous substance sites.
- CHMIRS: The California Hazardous Material Incident Report System contains information on reported hazardous material incidents.
- CORTESE: This database identifies public drinking water wells with detectable levels of contamination, hazardous substance sites selected for remedial action, sites with known toxic material identified through the abandoned site assessment program, sites with USTs having a reportable release and all solid waste disposal facilities from which there is known migration.
- NOTIFY 65: Notify 65 records contain facility notifications about any release that could impact drinking water and thereby expose the public to a potential health risk.
- LUST: The leaking Underground Storage Tank Incident Reports contain an inventory of reported leaking underground storage tank incidents.
- UST: The Underground Storage Tank database contains registered USTs.

- CA FID: The Facility Inventory Database contains active and inactive underground storage tank locations.
- HIST UST: Historical UST Registered Database.
- FINDS: The Facility Index System contains both information and "pointers" to other sources of information that contain more detail.
- HMRIS: The Hazardous Materials Incident Report System contains hazardous material spill incidents reported to the Department of Transportation.
- RAATS: The RCRA Administration Action Tracking System contains records based on enforcement actions issues under RCRA and pertaining to major violators.
- TRIS: The Toxic Chemical Release Inventory System identifies facilities that release toxic chemicals to the air, water, and land in reportable quantities under SARA Title III, Section 313.
- TSCA: The Toxic Substances Control Act identifies manufacturers and importers of chemical substances included on the TSCA Chemical Substance Inventory list.
- SSTS: Section 7 of the Federal Insecticide, Fungicide, Rodenticide Act, as amended (92 Stat. 829) requires all registered pesticide-producing establishments to submit a report to the Environment Protection Agency by March 1st of each year.
- FCTS: FCTS tracks administrative cases and pesticide enforcement actions and compliance activities related to FIFRA, TSCA and EPCRA (Emergency Planning and Community Right-to-Know Act) over the previous five years.
- AST: The Aboveground Storage Tank database contains registered ASTs.
- DRYCLEANERS: A list of drycleaner related facilities that have EPA ID numbers.
- WDS: California Water Resources Control Board – Waste Discharge System.
- DEED: The use of recorded land use restrictions is one of the methods the DTSC uses to protect the public from unsafe exposures to hazardous substances and wastes.
- NFE: This category contains properties that are suspected of being contaminated.
- CA SLIC: This database is maintained by the California Regional Water Quality Control Board.
- HAZNET: The data is extracted from the copies of hazardous waste manifests receive each year by the DTSC.

Although the results of this effort found a number of sites in the searched area, none of the sites were located on the USACE property. There was no evidence of contamination of the USACE property attributable to government ownership or usage. This was not unexpected since the only USACE activity after the initial construction of the Canal, was to perform general maintenance such as debris removal, or clearance of navigational hazards such as abandoned boats in the canal proper. However, there was still a potential that contamination could exist on the property from three non-governmental sources: adjacent property owners, boat traffic within the canal, and/or storm water discharge points into the canal.

4.1.1 Adjacent Property Owners

As stated above, about half of the adjacent properties on the Alameda side and all of the adjacent properties on the Oakland side are commercial/industrial. As would be expected in this setting, the records search by EDR (EDR, 2003) identified numerous sites on or near adjacent parcels where hazardous materials or petroleum products were used, stored, manifested and shipped. In some cases there are known releases to the environment. The areas of known releases that either have or could have impacts on the OIHTC property are discussed below.

2235 & 2241 Clement Avenue: The property located at 2235 and 2241 Clement Avenue adjacent to the canal is owned by Francis Collins. The former tenant on this property, Nelson's Marine, conducted sand blasting operations using silica and nickel slag blast grit. Other previous tenants slag blasted with copper and other abrasives. These activities impacted a portion of the OIHTC on Federal property.

Due to contaminants present on the property, the San Francisco Regional Water Quality Control Board (SFRWQCB) issued Order R2-2002-0091 (SFRWQCB, 2002) for the clean-up of the site. USACE submitted a Corrective Action Plan (CAP) to meet the final site clean-up requirements of the SFRWQCB. The CAP actions have been completed and the SFRWQCB issued Order R2-2014-0026 (SFRWQCB 2014) which rescinded the previous order.

2301 – 2337 Blanding Avenue: The property located at 2301 through 2337 Blanding Avenue is also known as the Park Street Landing. This is a site with gasoline detected in groundwater. The site is currently being addressed by Chevron in coordination with Alameda County Environmental Health Services. A draft Corrective Action Plan has been submitted (GeoTracker, 2016).

2421 Blanding Avenue: This site is known as Allied Engineering and Production Corporation. Since 1941 this site was used for iron works manufacturing, machining operations and the manufacture of precision hardware. Materials used or stored included hazardous materials, hydraulic oils, lubes, greases, fuels, coolants and solvents. The RWQCB is coordinating a response action with the property owners. A recent investigation was conducted by the land owner, (Geologica 2014), which confirmed previous efforts that there are metal shavings from site operations that have impacted federal property.

2517 Blanding Avenue: This site is known as Stone Boatyard. A Phase II Environmental Site Assessment was conducted in November 2004, (Questa, 2004). This assessment did recommend actions on the parcel but not on the federal property. It did however identify the metal shaving area on the adjacent Allied Engineering and Production Corporation site noted above.

4.1.2 Boat Traffic within the Canal

Potential discharges from typical boat traffic would be very difficult to define. With the nature of this site being aquatic, any releases would be dispersed prior to contacting the site sediments. Point sources are not anticipated. The sampling conducted was sufficient to make conclusions about the general levels of any constituents of concern from decades of use.

A geophysical survey was conducted to map the contours of the canal floor to determine the depth of sediment that has accumulated since its initial construction and to locate the position of buried pipelines and anomalies such as sunken vessels and/or debris. The survey consisted of side-scan sonar which was used to produce a mosaic of acoustic images of seafloor objects; a magnetometer survey to produce locations and contour maps of buried ferrous (metal) objects; and sub-bottom profiling to determine the sediment thickness and the geologic layers beneath the canal bottom. This survey was conducted by Sea Surveyor, Inc. (Sea Surveyor, 2009).

4.1.3 Storm Water Discharge Points

Storm water discharge points were taken into consideration when developing the sampling plan for the parcel. Soil samples were collected from 20 locations and sediment samples were collected from 23 locations along the canal. The samples were analyzed for a myriad of analytes.

4.2 Internal Observations of Facilities

As mentioned above there are no facilities on the parcel to be disposed of. For this reason there were no observations of heating and cooling systems, stains and corrosion, drains and sumps, waste piles, abandoned drums, debris, odors, incinerators, ovens, heaters, etc associated with buildings.

4.3 External Observations

Two site evaluations were performed at the site, one on 5 May 2003 and the second on 2 June 2004. The site evaluation was a visual assessment of the conditions that existed at the site. During the initial visit, notes and photographs were taken to document areas that may be of concern during the next phase of the investigation. The second trip was made to confirm the initial information and/or to fill in information that may have been insufficient to determine sample locations. It was also an opportunity to assess changing conditions on adjacent properties.

Elizabeth A.: The Elizabeth A. was an abandoned ship approximately adjacent to APN 071-0290-001-00. The ship tended to drift into the navigational portion of the canal and was considered a threat to navigation. Since it was considered a threat, the U.S. Coast Guard took the responsibility for removing the Elizabeth A. from the site. The Coast Guard also removed and disposed of approximately 20,000 gallons of petroleum contaminated water which were contained

inside the Elizabeth A. and the abandoned 55-gallon drums that were left on the deck area. The site evaluations occurred before the Elizabeth A was removed from the site. At that time, there was no visual evidence during either of the site evaluations that the petroleum contaminated water contained within the Elizabeth A. or the drums that have been left on deck have leaked into the canal.

Abandoned boats: The number and location of abandoned boats within the harbor is unknown and changes over time. Some of the abandoned boats left between the BH line and the PH line are occupied by transients. These boats may add contamination from petroleum products to the waters within the canal. Locations of the submerged boats was determined by the geophysical survey (Sea Surveyor, 2009). The results of the Geophysical Survey indicate that the canal is in good physical condition and is continuing to function in accordance with its intended purpose, requiring only minimal maintenance.

4.4 Property Classification

Based on a review of available data the following table documents the hazardous substances known to have been stored or released on the property, and the remedial actions taken.

Property Description	ECP Condition Category	Remedial Actions
2235 & 2241 Clement Ave	4	Soils removal for metals impacts to soil. All activities are completed and the RWQCB has closed the site, per RWQCB Order R2-2014-0026 dated June 11, 2014.
2301 – 2337 Blanding Ave	2	Petroleum produce contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
2421 Blanding Ave	4	Metals contamination emanating from an adjacent parcel. This is being addressed by the responsible party in coordination with the RWQCB. No federal actions have been identified.
The information contained in this table is required under the authority of regulation promulgated under section 120(h) of the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA or “Superfund”) 42 U.S.C. §9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance’s CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 C.F.R. Part 373.		

4.5 Disclosure of Non CERCLA Issues

As stated above there are not currently or have there been any federal facilities on the parcel. Private structures that may exist are not a part of this transfer. There are no records to indicate sources nor observed sources for many non-CERCLA issues such as asbestos, lead based paint, PCBs, radon, ordnance, radionuclides, waste management, sanitary sewer systems, nor RCRA facilities/SWMUs.

5.0 Environmental Sampling

The sections below discuss the sampling performed specifically for determining the conditions of the property to be disposed of. Section 4.1.1 identifies adjacent properties which have undergone characterization sampling efforts. In some cases those efforts extended onto federal property. Data gathered during those efforts has been summarized and the details can be found in the documents referenced in Section 4.1.1.

Details regarding the sampling efforts described below may be found in the Phase I & II Baseline Study (USACE 2014).

5.1 Soil Sampling

Personnel from the Environmental Geology Section (EGS) and the Environmental Design Section (EDS), Sacramento District, USACE performed the fieldwork for the soils investigation. Soil samples were collected from 2 through 5 August 2004 along the waterside of the canal, on both right and left banks, from the area between the bulkhead and the mean low water level. The locations were based on previous and current usage of the adjacent properties, site accessibility, and professional judgment of the onsite geologist.

Soil samples were collected from 20 locations along the canal. Discrete samples were collected at each location from depths of 0-6 inches and 2.0 to 2.5 feet below ground surface (bgs). The soil samples collected were analyzed for gasoline range organics (GRO); diesel range organics (DRO), volatile organic compounds (VOCs) and oxygenates; semi-volatile organic hydrocarbons (SVOCs), and the Title 22 metals of the California Code on Hazardous Waste.

Details from this sampling effort can be found in the OIHTC Phase I & II Baseline Study (USACE, 2014).

5.2 Sediment Sampling

Geophysical work was performed by Sea Surveyor, Inc. under USACE San Francisco District Contract No. W912P7-06-D-0004 to Bestor Engineering. Personnel from the Sacramento District were present during the geophysical survey and were responsible for the collection of the sediment samples.

Sediment samples were collected from 25 to 27 August 2008. The original Scope of Services to Sea Surveyor, Inc. required the collection of the sediment samples at two depths at each location using a Vibracore™ sampler. The bottom of the canal is extremely hard and is thought to be the original cut line from the canal construction. The Vibracore™ sampler was unable to penetrate the bottom of the canal. The sampling strategy was modified to collect a single sample at each location which would extend the breadth of coverage. This extended coverage was thought to better represent the entire extent of the canal. Sediment along most of the bottom is generally thin and forms isolated or discontinuous patches most likely due to tidal scour. By using a Ponar grab sampler, enough sediment was collected at the 23 locations to be considered representative of the conditions within the canal.

Sampling locations were slightly biased toward those areas where contamination was found in the soil samples. The thinness of the sediment accumulation allowed only one grab sample to be taken at each sample location. The sediment samples were analyzed for the same analytes as the soil samples with the exception of VOCs.

Details for this sampling effort can be found in the OIHTC Phase I & II Baseline Study (USACE, 2014) and the OIHTC 2009 Sediment Sampling and Analysis Report (USACE, 2016).

5.3 Environmental Standards

The quality of the soil data collected during this investigation was evaluated and found to be sufficient to use for risk evaluation. The complete Risk Screening Evaluation is located in the Phase I and II Baseline Study, (USACE 2014). The quality of the sediment data collected during this investigation was evaluated and found to be sufficient to use for an ambient evaluation. Sediment data is also of sufficient quality to determine if soil chemicals of concern are impacting the canal.

Based on the analytical results of the soil analyses and the Human Health Risk Evaluation, five locations were determined to warrant further investigation to determine the extent of the COPCs at those sites. The primary concern to be addressed was the metals specific to each location. The risk drivers associated with the soil samples were arsenic, chromium, lead, mercury and benzo(a)pyrene.

Additional sampling of the soils to determine the vertical and lateral extent of those specific metals was recommended but on returning to the site it was found that the sites either no longer existed (having been covered by rip rap) or there was insufficient area available for additional sampling. Because of the inability to obtain additional soil samples, it was decided to bias the sediment samples to emphasize these areas.

Concentrations of the inorganic constituents in sediment samples are near or below ambient concentrations at nearby Oakland Army Depot. Ubiquitous, trace concentrations of

benzo(a)pyrene, polychlorinated biphenyl (PCB) and PAHs in general, have no particular distribution indicating the absence of a nearby point source.

The widespread distribution of benzo(a)pyrene is believed to be the result of both diesel contaminations primarily from boat traffic within the canal and from storm water runoff over asphalt located on adjacent properties and streets that flow from storm drains into the canal.

No additional sediment sampling is recommended. The results of the sediment analysis indicate that potential soil impacts do not appear to have impacted adjacent sediments. The OIHTC can be transferred without further characterization.

6.0 Findings and Conclusions

The OIHTC is a very unique parcel with a unique history. It was obtained by the federal government for the purpose of constructing a navigable waterway. Since its construction the vast majority of the OIHTC parcel has been submerged. The federal government has never utilized the property for any other purpose. So there are no government facilities, such as, buildings or utilities. The amount of property that is not submerged is a small fraction of the parcel.

Since this parcel is primarily submerged there have been very few environmental impacts over the years. Furthermore since the federal government has not utilized the parcel there are no impacts attributable to the government. As described by this document, all known contaminants issues have been addressed or are being addressed by other responsible parties. There are no federal actions left to be taken for this parcel. All known impacts are identified in this EBS.

The data indicate that the nearby point sources in soils have not impacted the sediments of the canal. Concentrations of the inorganic constituents in sediment samples are near or below ambient concentrations at nearby Oakland Army Depot. The results of the Geophysical Survey indicate that the canal is in good physical condition and is continuing to function in accordance with its intended purpose, requiring only minimal maintenance.

The few areas where impacts have occurred have been documented and all federal actions have been completed. The overall Environmental Condition of Property has been determined to be a Category 4 and is suitable for disposal for civilian reuse.

7.0 References

- EDR 2003 - The EDR Corridor Study Report, Study Area, Oakland Canal, Oakland, CA, Environmental Data Resources Inc., March 24, 2003.
- Figuers 1998 - Groundwater Study and Water Supply History of the East Bay Plain, Alameda and Contra Costa Counties, CA, Figuers, s., June 15, 1998.
- Geologica, 2014 - Limited Phase II Investigation, Allied Engineering Property, 2421 Blanding Avenue, Alameda, CA – Geologica , Sept 18, 2014
- GeoTracker, 2016 - GeoTracker web based database, State Water Resources Control Board http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T06019744728, Accessed August, 15, 2016.
- Questa, 2004 - Phase II Environmental Site Assessment, Stone Boatyard, 2517 Blanding Avenue, Alameda, CA, Questa Engineering Corp, November 2004.
- Sea Surveyor, 2009 – Final Report, Oakland Tidal Canal, Geophysical Survey & Sediment Sampling, Sea Surveyor Inc., March 2009
- SFRWQCB, 2002 – Order No R2-2002-0091, Adoption of Site Cleanup Requirements (Order No. R2-2001-0091) for: Cal Steel Coating/US Army Corps of Engineers, Alameda and Oakland Harbor Channel, Alameda County, San Francisco Regional Water Quality Control Board, September 18, 2002.
- SFRWQCB, 2014 – Rescission of Site Cleanup Requirements (Order No. R2-2001-0091) for: Cal Steel Coating/US Army Corps of Engineers, San Francisco Regional Water Quality Control Board, June 11, 2014.
- USACE, 2014 – Oakland Inner Harbor Tidal Canal (OIHTC), Phase I and II Baseline Study, Final, USACE, Sacramento District, December 2014
- USACE, 2016 – Oakland Inner Harbor Tidal Canal (OIHTC), 2009 Sediment Sampling and Analysis Report, Final, San Francisco District, August 2016.

DAEN-REM-I (10 May 83) 2nd Ind
SUBJECT: Oakland Inner Harbor Tidal Canal, California - Proposed Excess

DA, Office of the Chief of Engineers, Washington, D. C. 20314 21 Sep 83

TO: Assistant Secretary of the Army (IL&FM)

1. It has been determined that 85.5 acres of Government-owned unimproved land and .01 acre of easement interest at the Oakland Inner Harbor Tidal Canal, California, are excess to project requirements.
2. The property was acquired from several individuals by a decree of the court dated 25 September 1882. The original purchase price of the proposed excess area was approximately \$39,178.
3. There are several encroachments on this land. The property will be disposed of subject to the right to operate and maintain the canal and reserving to the Government a permanent right-of-way for the authorized channel.
4. It is recommended that the land be declared excess and authority granted to dispose of the land in accordance with applicable laws, rules and regulations.
5. This is a categorically excluded environmental action under 33 C.F.R. Part 230.

FOR THE CHIEF OF ENGINEERS:

3 Encl
nc



DAVID L. COHEN
Chief, Management and Disposal Division
Directorate of Real Estate

Assistant Secretary of the Army (IL&FM) *3d Ind*
at [unclear], *attn: DAEN-REM-I*

28 SEP 1983



Gordon M. Hobbs
Assistant for Real Property
GMB: [unclear]



DEPARTMENT OF THE ARMY
SACRAMENTO DISTRICT, CORPS OF ENGINEERS
650 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814

REPLY TO
ATTENTION OF SPKRE-M

10 May 1983

SUBJECT: Oakland Inner Harbor Tidal Canal, California - Proposed Excess

Commander, South Pacific Division
ATTN: SPDRE-M

1. In compliance with EP 405-1-2, paragraph 11-19, we are proposing approximately 85.50 acres of fee and .01 acre of easement be reported excess at subject project. The San Francisco District has concurred in said disposal. Real estate maps and drawings are inclosed showing the location of the excess area.
2. There are no government-owned improvements. There are several encroachments as shown on Drawing 2-55-3.
3. The nature of the excess area (a tidal canal) may hinder disposition.
4. The property was acquired by a decree of the courts dated 25 September 1882, No. 3590, from several defendants (M. Crooks, et al).
5. The area is owned in fee except for an easement from the City of Alameda. A list of the outgrants are inclosed and are delineated on Drawing 2-55-3. The property will have to be disposed of subject to the following reservations:
 - a. A permanent right-of-way width of 350 feet.
 - b. Rights to maintain and operate authorized depth (18 feet) and width (275 feet).
6. The purchase price of the proposed excess area was approximately \$39,178.00

ARTHUR E. WILLIAMS
Colonel, CE
District Engineer

- 3 Incl
1. Outgrants
2. RE Map
3. Dwgs

SPDRE-M (10 May 83) 1st Ind
SUBJECT: Oakland Inner Harbor Tidal Canal, California - Proposed
Excess

DA, South Pacific Division, Corps of Engineers, 630 Sansome St.,
Rm 1216, San Francisco, California 94111 17 May 1983

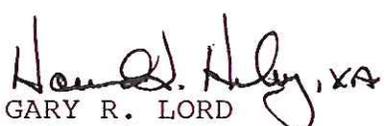
TO: CDR USACE (DAEN-REM) WASH DC 20314

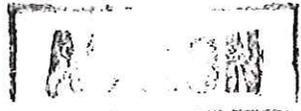
1. Reference EP 405-1-2, paragraph 11-19.
2. In accordance with referenced regulation, forwarded is a District proposal to report as excess approximately 85.5 acres of fee land and .01 acre of easement interest at the subject location.
3. This office concurs in the proposed action.

FOR THE COMMANDER:

3 Incl
nc

CF:
SPKRE-M


GARY R. LORD
Colonel, CE
Deputy Commander



DAEN-REM-I (10 May 83) 4th Ind
SUBJECT: Oakland Inner Harbor Tidal Canal, California - Proposed Excess

HQ, U. S. Army Corps of Engineers, Washington, D. C. 20314 30 Sep 83

TO: Commander, Sacramento District
ATTN: SPKRE-M

1. Forwarded for continuance of action.
2. In lieu of the suggested property reservations which reference specific widths and depths of the retained right-of-way, it is recommended that the property be disposed of subject to a perpetual right-of-way for the operation and maintenance of the authorized channel.

FOR THE COMMANDER:

3 Encl
nc

EDGAR F. RUMMEL
Acting Chief, Management and Disposal
Division
Directorate of Real Estate