

# **Appendix F**

**Central Valley Regional Water Quality Control Board  
State Land Use Covenant**

RECORDING REQUESTED BY:

Yolo County

WHEN RECORDED, MAIL TO:

California Regional Water Quality Control Board, Central Valley Region

11020 Sun Center Drive, #200

Rancho Cordova, California 95670-6114

ATTN: Pamela C. Creedon, Executive Officer

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

**COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY**

**ENVIRONMENTAL RESTRICTION**

**(Re: Davis Global Communications Site, County of Yolo, APN(s): 03313008,  
03313009)**

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This Covenant and Agreement ("Covenant") is made by and between the County of Yolo (the "Covenantor") and the California Regional Water Quality Control Board, Central Valley Region ("Regional Water Board"). Collectively the Covenantor and the Regional Water Board are referred to as the "Parties". The Covenantor is the current owner of the Property, situated in the County of Yolo, State of California, and depicted in Exhibit A1 and described in Exhibit B1, attached and incorporated herein by this reference (the "Property").

Pursuant to Civil Code Section 1471 and Water Code Section 13307.1, the Regional Water Board has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of potential risk related to the possible presence on the land of hazardous materials, as defined in Health & Safety Code ("H&SC") Section 25260. The Parties hereby agree, pursuant to Civil Code Section 1471 and Water Code Sections 13304 and 13307.1 that

the use of the Property shall be restricted as set forth in this Covenant.

## **ARTICLE I**

### **STATEMENT OF FACTS**

1.01 Property Description. The Property, totaling approximately 314 acres, is depicted and described in Exhibits A1 and B1, respectively. The Property is the former Davis Global Communications Site, an annex of the former McClellan Air Force Base in Yolo County, California. The Property is located approximately 4 miles southeast of the City of Davis and is generally bounded on the north by County Road 35, on the south by County Road 36, on the west by County Road 104, and on the east by County Road 105.

1.02 Property Transfer. The Property was transferred to the Covenantor by the United States, acting by and through the Department of the Air Force (“Air Force”), pursuant to Section 9620(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA,” 42 U.S.C. 9601 et seq.). Approximately 55 acres of the 314 acres (depicted in Exhibit A2 and described in Exhibit B2) were transferred as an “early transfer.” Under early transfer authority, the Regional Water Board must be satisfied that, among other things, restrictions will be placed on the Property that assure that human health and the environment will be protected while the remedial work is completed. For these reasons, the Covenantor has chosen to enter into this Covenant with the Regional Water Board. Participation in this Covenant will assure that human health and the environment are protected as the Air Force completes response actions at the Property.

1.03 Vadose Zone Contamination. Remedial investigations at the Property have identified soil and soil vapor contamination consisting of total petroleum hydrocarbons (TPH); benzene, toluene, ethylbenzene, and xylenes (BTEX); and volatile organic compounds (VOCs). The TPH and BTEX contamination is the result of leakage from three former 20,000-gallon underground storage tanks (USTs) southwest of Building 4710. The Air Force determined that the source of the VOCs, which are

primarily tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, 1,1-dichloroethene, and vinyl chloride, is unrelated to the leaking USTs and may be related to past solvent disposal practices. The VOCs were primarily detected northeast and southeast of Building 4710. The vadose zone contamination occurred prior to the Covenantor's acquisition of any legal interest in the Property. Nothing in this Covenant obligates the Covenantor to fund or otherwise participate in any way in current and future removal, remediation, or other activities associated with the vadose zone contamination or any other contamination occurring prior to Covenantor's acquisition of the Property (including but not limited to the contamination described in the *Final Interim Record of Decision, Davis Global Communications Site, February 1995*), except to the extent that the Covenantor takes actions to exacerbate the contamination.

1.04 Vadose Zone Remedial Actions. Contaminated soils above the three USTs were removed in 1985 and additional soil was excavated in 1988 when the USTs were removed. In 1993, the Air Force installed a bioventing system to remediate the residual TPH/BTEX contamination in site soils and the system operated until 2002. Subsequent investigations have determined that the bioventing system removed much of the petroleum mass and the remaining mass is expected to degrade naturally over time. Closure criteria to address threats to human health or the environment will be evaluated at the time the Final Record of Decision (ROD) will be prepared (2009/2010).

The 1995 Interim Record of Decision (IROD) selected soil vapor extraction (SVE) to clean up VOCs in the vadose zone. The SVE system was installed in June 1996 and operated until September 1999. The Regional Water Board concurred with shutdown and removal of the SVE system, but SVE wells were left in place. Shutdown of the SVE system was accepted before formal soil vapor extraction termination or optimization (STOP) procedures were agreed upon between the Regional Water Board and the Air Force. Final shutdown of the SVE system, including decommissioning the SVE wells, is on hold until the Air Force submits proper documentation of the STOP process for Regional Water Board review and concurrence. It is anticipated that the Air Force will submit this documentation in 2009/2010.

Due to the residual TPH contamination at the Property and uncertainty with the

remediation of the VOCs, the Parties have concluded that residual waste in site soils may pose an unacceptable threat to human health and the environment in the vicinity of Building 4710. Land use restrictions are needed to prevent potential exposure to residual contamination in the vadose zone beneath the Property.

1.05 Groundwater Pollution. Monitoring data indicate portions of the groundwater underlying the Property are polluted by volatile organic compounds (“VOCs”), primarily tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, 1,1-dichloroethene, vinyl chloride, and benzene. Concentrations of some of these VOCs exceed federal and State maximum contaminant levels (MCLs). Local groundwater pumping has the potential of adversely affecting the spread of these VOCs in the groundwater. The groundwater pollution (as described in the *Interim Record of Decision, Davis Global Communications Site*, February 1995) occurred prior to the Covenantor’s acquisition of any legal interest in the Property. Nothing in this Covenant obligates the Covenantor to fund or otherwise participate in any way in current and future removal, remediation, or other activities associated with the groundwater pollution or any other contamination occurring prior to Covenantor’s acquisition of the Property except to the extent that the Covenantor exacerbates the contamination or pollution.

1.06 Groundwater Remedial Action. The Air Force is remediating contaminated groundwater in accordance with the IROD. A groundwater pump and treat system consisting of 6 extraction wells, 43 monitoring wells, 2 injection wells, and a groundwater treatment plant was installed in 1995 and operated until October 2005. The system was shut down in October 2005 to test potential remedial alternatives to enhance the groundwater remedy. The pump and treat system may be restarted in the future.

The Parties have concluded that groundwater beneath the Property presents an unacceptable threat to human health and the environment and that any pumping or use of groundwater may adversely impact groundwater remediation activities. Therefore, restrictions to eliminate exposure to and use of the groundwater are necessary until the

Regional Water Board determines that the remedial action objectives specified in the Final Record of Decision (scheduled for completion in 2009/2010) have been achieved.

## **ARTICLE II**

### **DEFINITIONS**

2.01 Regional Water Board or RWQCB. “Regional Water Board” shall mean the Regional Water Quality Control Board, Central Valley Region, and shall include its successor agencies, if any.

2.02 Owner. “Owner” means the Covenantor, its successors in interest, including heirs and assigns, who at any time hold title to or an ownership interest in all or any portion of the Property, during the time of such ownership.

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

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

## **ARTICLE III**

### **GENERAL PROVISIONS**

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, “Restrictions”), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Regional Water Board; and (d) is imposed upon the entire

Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners / Occupants. This Covenant binds all Owners/Occupants of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners/Occupants, heirs, successors, and assignees. Pursuant to Civil Code Section 1471(b), all successive Owners/Occupants of the Property are expressly bound hereby for the benefit of the State.

3.03 Written Notification of Hazardous Substance Release. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant.

3.04 Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and lease for any portion of the Property.

3.05 Conveyance of Property. The Owner shall provide written notice to the Regional Water Board no later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one or, if the APN has changed, the APN assigned at the time of transfer. If the new owner's Property has been assigned a different APN, each such APN that covers the Property must be provided. The Regional Water Board does not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Covenant. The Regional Water Board will in the future incur costs associated with the administration of this Covenant. Therefore, Owner hereby covenants for itself and for all successors in interest to pay the Regional Water Board's costs reasonably incurred in administering the Covenant. Such costs shall be paid in accordance with the terms and provisions of a separate cost reimbursement agreement between Owner and the Regional Water Board. Annual

costs for the administration of the Covenant are estimated at \$2,700. The Regional Water Board will provide annual cost estimates to Owner for each fiscal year the covenant is in effect.

## **ARTICLE IV RESTRICTIONS**

4.01 Restrictions. The Property may not be put to any of the following uses by Owners/Occupants [Restrictions (1) through (5) apply to the area defined in Exhibits A3 and B3, and Restrictions (6) through (9) apply to the Property as defined in Exhibits A1 and B1]:

(1) A residence, including any mobile home or factory built housing, used as residential human habitation.

(2) A hospital for humans.

(3) A public or private school for persons under 18 years of age.

(4) A day care center for children.

(5) Construction of other buildings that are not listed in subsections (1) through (4), above, in the area defined in Exhibits A3 and B3 without the prior written approval of the Regional Water Board and prior to any construction addressing potential health risks that may be posed via indoor air contaminated by volatile chemicals in shallow soils (i.e., vapor intrusion) by either (a) designing and constructing structures within the area defined in a manner that would mitigate unacceptable risk under applicable law (for example, through installation of a vapor intrusion barrier or gas collection system); or (b) evaluating the potential for unacceptable risk prior to the erection of any structure in the same area, and including mitigation of the vapor intrusion in the design/ construction of the structure prior to occupancy if an unacceptable risk is posed under applicable law. The Covenantor will coordinate any and all evaluation and potential mitigation measures required under applicable law with the Regional Water Board. Nothing in this paragraph should be construed as requiring any action beyond what is required by applicable law.



(6) Use of the existing groundwater production well for any purpose other than fire suppression without the prior written approval of the Regional Water Board.

(7) Any use of the Property that causes alteration of groundwater conditions within the Property through activities such as construction of any well; extraction, use or consumption of groundwater from wells within the boundary of the Property, except as provided in Section 4.01(6), above; use of any groundwater within the boundary of the Property except as specified in Section 4.01 (6); or construction or creation of any groundwater recharge area, unlined surface impoundments, or disposal trenches without the prior written approval of the Regional Water Board. The parties recognize that the Covenantor intends to engage in vernal pool restoration and similar habitat restoration activities which may require shallow excavation, and the Regional Water Board agrees to permit the County to engage in such activities outside the area identified in Exhibits A3 and B3 with the recognition that groundwater will not be affected by such activities.

(8) Any use of the Property that would cause disturbance of or limit access to any equipment or systems associated with groundwater or soil vapor extraction remediation or monitoring.

(9) Non-Interference with Ongoing Remediation. Construction, operations, or other activities on the Property shall not interfere with necessary monitoring, investigation, assessment, or remediation activities, without prior written permission of the Air Force.

4.02 Soil Management. The following restrictions apply to soils on the Property:

(1) No activities that will disturb the soil (e.g., digging, excavation, grading, removal, trenching, filling, earth movement or mining), shall be allowed within the area defined in Exhibits A3 and B3 without prior written approval from the Regional Water Board. A soils management plan shall be prepared for Regional Water Board review and concurrence before conducting any intrusive activities in the area defined in Exhibits A3 and B3.

(2) Any soils brought to the surface by digging, grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law, and in accordance with the soil management plan required in 4.02(1), above.

4.03 Access for the Regional Water Board. The Regional Water Board shall have reasonable right of entry and access to the Property defined in Exhibits A1 and B1 for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Regional Water Board to protect the public health or safety or the environment. The Regional Water Board shall to the extent possible provide advance notice to, and coordinate with, the Owner, lessee, or sublessee of the Property, as appropriate, regarding access requirements. The State shall use reasonable care to avoid disturbing any habitat, habitat restoration or other authorized activities of the County on the Property. The Regional Board shall indemnify and hold harmless the Covenantor and its elected officials, officers, employees, agents, or representatives from liabilities, penalties, costs, losses, damages, or expenses proximately caused by any negligent acts or willful misconduct of the Regional Board or its officers, directors, employees, agents or representatives while on the Property.

## **ARTICLE V**

### **ENFORCEMENT**

5.01 Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Regional Water Board to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Regional Water Board, shall be grounds for the Regional Water Board to pursue administrative, civil or criminal actions, as provided by law.

5.02 Nothing in this Covenant is intended to preempt the State's authority to

implement and enforce applicable laws.

## ARTICLE VI

### VARIANCE, TERMINATION, AND TERM

6.01 Variance. The Owner, or any other aggrieved person, may apply to Regional Water Board for a written variance from the provisions of this Covenant. The Regional Water Board will grant the variance only after finding that such a variance would be protective of human health, safety and the environment.

6.02 Termination or Modification. The Owner, or any other aggrieved person, may apply to the Regional Water Board for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property.

6.03 Term. This Covenant shall continue in effect in perpetuity unless ended in accordance with the Termination paragraph above, by law, or by the State in the exercise of its discretion. The parties agree that the State shall terminate this Covenant if and when the vadose zone contamination and the groundwater pollution, as defined above, have been fully remediated, as determined by the Regional Water Board, so long as this Covenant is no longer reasonably necessary to protect present or future human health or safety or the environment as a result of potential risk related to the possible presence on the land of hazardous materials. This Covenant may also be terminated at an earlier point in time in accordance with the provisions of Section 6.02, above.

## ARTICLE VII

### MISCELLANEOUS

7.01 No Dedication or Taking. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or

any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under state or federal law.

7.02 Notices. Whenever any person gives or serves any notice (“notice” as used here includes any demand or other communication with respect to this Covenant), each such notice shall be in writing and shall be deemed effective: when delivered, if personally delivered to the person being served or three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor:                      Director of Yolo County Parks and Resources  
Department  
120 West Main Street, Suite C  
Woodland, CA 95695

To Regional Water Board: Executive Officer  
California Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.03 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

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

7.05 Statutory References. All statutory references include successor

provisions.

7.06 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Regional Water Board for its approval by January 15<sup>th</sup> of each year. The inspection shall entail evaluation of compliance with Sections 4.01 and 4.02. The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report. The Annual Inspection Report shall also evaluate compliance with section 4.03. If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: use its best efforts to determine the identity of the party in violation, and if a violator is identified, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Regional Water Board within ten (10) days of its original transmission.

7.07 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Yolo within ten (10) days of the Covenantor's receipt of a fully executed original.

7.08 Approvals. Where the approval or concurrence of the Regional Water Board is required under this Covenant, such approval shall not be unreasonably withheld.

YOLO COUNTY

By: \_\_\_\_\_

Duane Chamberlain

Title: Chair, Yolo County Board of Supervisors

Date: \_\_\_\_\_

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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year  
\_\_\_\_\_,  
before me \_\_\_\_\_, personally appeared

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

REGIONAL WATER QUALITY CONTROL BOARD,  
CENTRAL VALLEY REGION

By: \_\_\_\_\_

Pamela C. Creedon

Title: Executive Officer

Date: \_\_\_\_\_

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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year  
\_\_\_\_\_,  
before me \_\_\_\_\_, personally appeared

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

## **EXHIBITS A1, A2, AND A3**

Plates showing Property restricted by this covenant:

[Exhibit A1: Boundary of Entire 314-Acre Site]

[Exhibit A2: Early Transfer Area]

[Exhibit A3: Area of Residual Vadose Zone Contamination]









## **EXHIBITS B1, B2, AND B3**

Legal descriptions of the Property restricted by this covenant:

[Exhibit B1: Boundary of Entire 314-Acre Site]

[Exhibit B2: Early Transfer Area]

[Exhibit B3: Area of Residual Vadose Zone Contamination]