

APPENDIX D

CITY OF DEL REY OAKS EXCAVATION ORDINANCE

From Covenant to Restrict Use of Property Environmental Restriction (relates to Finding of Suitability for Early Transfer (FOSET) with CERCLA 120(h)(3) Covenant Deferral DEL REY OAKS Parcels) dated September 9, 2004

APPENDIX D CITY OF DEL REY OAKS EXCAVATION ORDINANCE

This section provides excerpts of the excavation ordinance as they apply to the Del Rey Oaks MRA. A copy of the ordinance is provided at the end of this Appendix and can also be found in the Covenant to Restrict Use of Property Environmental Restriction (relates to Finding of Suitability for Early Transfer (FOSET) with CERCLA 120(h)(3) Covenant Deferral DEL REY OAKS Parcels) dated September 9, 2004.

It is unlawful for any person, including utilities, to engage in any of the following activities on any property located within the Del Rey Oaks MRA unless that person is acting pursuant to a valid permit issued pursuant to the ordinance: excavation, digging, development, or ground disturbance of any type involving the displacement of 10 cubic yards or more of soil.

A permit shall be required prior to the commencement of ground disturbing activities of any kind. The permit application shall contain the following information:

- A description of any previous MEC excavation or removal activity conducted other than by the Army on the property whose soil is proposed to be excavated, moved, or graded.
- A description of the property, whose soil is proposed to be excavated, moved, or graded. The description will include a drawing with dimensions to a scale which sets forth the size and details of all proposed excavation activity, including any proposed cut and fill, trenching, well drilling, mineral excavation, post hole drilling, or other activity of any sort whenever the applicant proposes to disturb 10 cubic yards or more of soil.
- A statement that the person submitting the application acknowledges liability if the person removes any detected unexploded ordnance or otherwise violates the ordinance or the permit. The Army will continue to have the liability to remove any ordnance items found. The person submitting the application is responsible to follow the procedures for notification of the DTSC, EPA, and the Army upon finding any ordnance item.
- A statement by the person submitting the application that s/he has, within the preceding twelve months, delivered a copy of the Safety Alert, as required under the ordinance, to everyone whose work at the property described above includes disturbing soil.

The City Manager will review the permit application and shall approve the permit unless evidence is available which indicates that the proposed grading or excavation will create an undue risk to the health and safety of the public at large. Prior to acting on any such application, the City Manager, at his/her sole discretion, may set and conduct a public hearing for the purpose of receiving comments on the proposed grading and excavation. The issuance of any permit will be subject to the following conditions:

- All excavation and grading within the Del Rey Oaks MRA will be performed solely in accordance with the permit approved by the City and in accordance with the permit as issued by the City.
- Prior to movement of any soil on any property located within the Del Rey Oaks MRA, the permittee or designee shall personally deliver to each person who intends to work on the property described in the permit the Safety Alert, and explain to each such person the information set forth in that notice.

- The permittee may not move or disturb unless the permittee is in compliance with the requirements placed on the property by the construction support agreement. These requirements will be attached to and become part of any permit issued pursuant to the Excavation Ordinance.
- The permittee shall cease soil disturbance activities upon discovery of any suspected unexploded ordnance. The permittee shall notify the Del Rey Oaks Police Department, the Directorate of Law Enforcement at the Presidio of Monterey, the Army, DTSC, and EPA of any suspected unexploded ordnance discovered during any excavation or soil removal immediately upon discovery. The permittee shall coordinate appropriate response actions with the Army, DTSC, and EPA.
- No later than thirty days following the completion of the permitted soil disturbance activity, the permittee shall prepare and file with the City, and the Army, DTSC, and EPA an After Action Report that states if and where military munitions were detected and the extent and depth of the response action taken and completed on the property. The After Action Report will include site maps illustrating the information contained in the report.

The City will notify the owners of property within the Del Rey Oaks MRA and those utilities known to be providing services within the City, of the requirements of the Excavation Ordinance and provide those persons with the Safety Alert – Ordnance and Explosives at Former Fort Ord. The City will also annually notify the owners of property within the Del Rey Oaks MRA, as shown on the equalized tax rolls, of the requirements of the Excavation Ordinance and provide those persons with a copy of the requirements.