

Regional Open Space

N00296.000770
MOFFETT FIELD
SSIC NO. 5090.3.A.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

October 1, 2002

Mr. Lawrence L. Lansdale
SW Division, Naval Facilities Engineering Command
BRAC Operations Office
1230 Columbia Street, Suite 1100
San Diego, CA 92101-8517

Dear Mr. Lansdale,

Please find enclosed your copy of the fully executed *Permit to Enter* between the United States Department of the Navy and the Midpeninsula Regional Open Space District (District) for soil sampling activities to be conducted on Stevens Creek Shoreline Nature Study Area (District property). Per your letter dated September 24, 2002, soil sampling is scheduled to begin on District property on October 1, 2002 and is anticipated to be completed on October 8, 2002. If this schedule changes, please call and notify Duncan Simmons at (650) 691-1200.

If you have any questions, please do not hesitate to contact the District.

Sincerely,


Ana Ruiz
Open Space Planner

Enclosure

PERMIT TO ENTER

This Permit to Enter is by and between the Midpeninsula Regional Open Space District, a California special district formed pursuant to Article 3, Division 5, Chapter 3 of the Public Resources Code (hereinafter "DISTRICT"), and the United States Department of the Navy (hereinafter "NAVY").

The parties hereby agree as follows:

1.0 PROPERTY

Solely on the terms and conditions set out herein, DISTRICT grants NAVY a Permit to Enter its Stevens Creek Shoreline Nature Study Area (hereinafter "Property") subject to the conditions set forth herein.

2.0 PURPOSE

This Permit to Enter is for the sole purpose of conducting soil sampling to investigate for soil contamination on DISTRICT Property. NAVY shall collect a total of 96 soil samples for analysis of chemical concentrations drawn from 24 grid locations at depths of 0 to 6 inches below ground surface (bgs) (24 samples), 6 to 12 inches bgs (24 samples), 12 to 18 inches bgs (24 samples), and 18 to 24 inches bgs (24 samples), all as more particularly set forth in the Final Pre-Construction Sampling Work Plan for Site 25-Eastern Diked Marsh and Stormwater Retention Pond, dated July 26, 2002 ("Work Plan"), a copy of which is on file with DISTRICT and which is incorporated herein by this reference.

3.0 PERMIT CONDITIONS

The sampling shall be subject to the following permit conditions:

- 1) NAVY shall notify DISTRICT at least seven (7) days prior to commencement of work hereunder.
- 2) NAVY shall be responsible for obtaining all necessary government permits and approvals, if any. Copies of any such permits shall be provided to DISTRICT at least forty-eight (48) hours prior to commencement of work on the site under such permit.
- 3) This Permit to Enter is limited to NAVY, its officers, employees, consultants, and contractors. NAVY, as used in this Permit to Enter, includes such officers, employees, agents, consultants, and contractors as are appropriate in such context. NAVY may delegate to such officers, employees, agents, consultants, and contractors any duties or responsibilities required hereunder, but such delegation shall not relieve NAVY of such duties or responsibilities. NAVY may bring onto the

Property only such persons, vehicles, and equipment as are reasonably necessary to complete the Project.

- 4) NAVY agrees to directly provide to DISTRICT all soil sampling results and analysis, remedial designs, remedial action work plans and any other reports affecting the Property, including but not limited to, those which may from time to time be required by, or otherwise provided to, the Regional Water Quality Control Board, the United States Environmental Protection Agency, or other governmental agency, or which may be conducted by NAVY, arising out of or relating to soil sampling activities performed hereunder.
- 5) NAVY shall remove all excavated material from the site at NAVY'S own expense and dispose of such material in full conformance with all applicable laws, ordinances and regulations. NAVY shall handle all excavated material in full conformance with CERCLA and other applicable laws, ordinances and regulations. In no case shall such materials be stored onsite.
- 6) Heavy equipment required to conduct soil sampling may be transported to the site on vehicles via road-width access routes that extend on the crest of the levees. NAVY is responsible for notifying and receiving written access approval from the appropriate easement and fee title holders of such levees. At no time shall vehicles travel off the levee access roads. Any work to be conducted beyond the levee access roads must be conducted on foot or from small non-motorized water craft.
- 7) At no time shall signage, fencing, or any other structures or facilities be removed or impacted unless previously authorized in writing by District Representative.
- 8) NAVY shall limit its activities on the Property to the operational area as set forth in the Work Plan and may not conduct activities on DISTRICT property outside of this area without the additional written approval of DISTRICT.
- 9) NAVY will leave the Property, levee access roads, and surrounding site in a condition equal to or better than that in which it was originally found.
- 10) NAVY shall promptly notify DISTRICT upon completion of all field work conducted pursuant to this Permit to Enter.
- 11) Access to Property for activities permitted hereunder is limited to from sunrise to one-half hour after sunset, unless otherwise previously approved in writing by District Representative.

4.0 TERM

The term of this Permit shall commence upon execution by DISTRICT's General Manager and shall terminate three months thereafter, provided however that should reasonable need for more time or for additional sampling points be demonstrated by NAVY, such term may be extended upon express written permission of DISTRICT's General Manager.

5.0 NOTICE

Any notice or notices required or permitted to be given pursuant to this Permit may be personally served on the other party by the party giving such notice, or may be served by U.S. mail to the following address:

DISTRICT: L. Craig Britton, General Manager
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404
(650) 691-1200
(650) 691-0485 (FAX)

with an additional copy to:

DISTRICT REPRESENTATIVE: Ana Ruiz, Open Space Planner
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404
(650) 691-1200
(650) 691-0485 (FAX)

NAVY: Lawrence Lansdale, P.E.
BRAC Environmental Coordinator
Southwest Division
Naval Facilities Engineering Command
BRAC Operations Office
1220 Pacific Highway, Code 06CH.LL
San Diego, CA 92132-5190
(619) 532-0961
(619) 532-0995 (FAX)

If sent by telegraph, facsimile copy or cable, a confirmed copy of such telegraphic, facsimile, or cabled notice shall also promptly be sent by mail (in the manner provided above) to the addressee. If sent by telegraph, facsimile copy, or cable, and a confirmed copy of such telegraphic, facsimile, or cabled notice is also promptly sent by mail to the address as provided herein, service shall be complete upon receipt by addressee of such telegraph, facsimile copy or cable. If communication is made only by mail, service shall

be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt of at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or different person to which such notices, requests, or demands are thereafter to be addressed or delivered. Nothing contained in this Agreement shall excuse either party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirement of written notice as provided in this Section.

6.0 DAMAGE AND LIABILITY

NAVY agrees that its officers, employees, agents, consultants, and contractors shall be instructed that their use of equipment and tools on the Property shall be done with all reasonable care, diligence, and sufficient precautions to avoid damage to each other, to the land, property, or personnel of DISTRICT and to members of the public.

NAVY agrees to be responsible for damages to DISTRICT arising from the activities of NAVY, its officers, employees, authorized representatives (including contractors) on the Property, in the exercise of rights granted herein, either by repairing such damage to the reasonable satisfaction of DISTRICT or as determined in accordance with the applicable provisions of the Federal Tort Claims Act (62 Stat 869, 28 U.S.C. 2671, et seq.).

NAVY and its contractors shall have sole responsibility for the safeguarding of their equipment, property, and personnel (i.e., without limitation, officers, employees, agents, consultants, and sub-contractors) from any and all injury, death, or damage as a result of this Project.

7.0 HAZARDOUS SUBSTANCES INDEMNIFICATION

If the death of or injury to any person, or the loss of or any damage to any property is caused by NAVY in the course of its use of the Property, the liability, if any, of the NAVY therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (62 Stat 869, 28 U.S.C. 2671, et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 103, et seq.).

8.0 INSURANCE

Throughout the term of this agreement, NAVY's contractors, at their sole cost and expense, shall maintain in full force and effect, comprehensive general liability insurance covering bodily and personal injury and property damage arising out of such contractor's activities pursuant to this Permit to Enter. Limits shall not be less than \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage. This Permit is not valid without such contractor's insurance then being in effect as shown on the Certificate of Insurance, which is made a part of this permit. The policy shall name DISTRICT as an additional insured. Such insurance policies shall not be cancelled or

materially changed without thirty (30) days' prior written notice to DISTRICT.

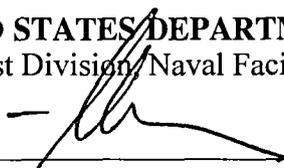
Throughout the term of this agreement, NAVY's contractors, agents, consultants or other representatives, at their sole cost and expense, shall maintain in full force and effect appropriate policies of Worker's Compensation Insurance covering all of its employees as required by law.

9.0 CANCELLATION

This Permit to Enter shall be cancelable by DISTRICT upon 48 hours written notice to NAVY.

This Permit to Enter has been read and understood and its provisions are hereby agreed to and accepted.

UNITED STATES DEPARTMENT OF THE NAVY
Southwest Division/Naval Facilities Engineering Command



William R. Carsillo
Real Estate Contracting Officer
Base Realignment & Closure Office

Date 9/25/02

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT



L. Craig Britton
General Manager

Date 10/01/02