

WHEREAS, Plaintiffs brought this action styled Granite Management Corporation, et al. v. United States, et al., and bearing Civil Action Number CIV. S-03-0866 FCD PAN in the United States District Court for the Eastern District of California, ("the Action");

WHEREAS, this Action involves claims by Plaintiffs under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (hereinafter "CERCLA"), together with other claims, seeking to recover certain costs they have allegedly incurred in response to the release or threatened release of hazardous substances at the Tourtelot site ("the Site"), and seeking a declaration as to the various Defendants' liability for costs to be incurred in the future;

WHEREAS, on June 23, 2004, the State of California's Department of Toxic Substances Control ("DTSC") certified that it "considers the remediation of the Tourtelot Cleanup Project Site complete" and anticipates "no further removal/remediation is necessary at the Project Site". (See Attachment 1).

WHEREAS, the Parties desire to enter into this Agreement to have a full and final resolution of any and all claims with certain exceptions expressly reserved below that were, could now be or hereafter could be asserted against the United States in connection with the Site and to avoid the complication and expense of further litigation of such claims concerning the Site;

WHEREAS, the Parties agree that this Agreement is fair, reasonable and in the public interest; and

WHEREAS, the United States enters into this Agreement as a final settlement of all claims in connection with the Site and does not admit any liability arising from occurrences or transactions pertaining to the Site;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Parties. The Parties to this Agreement are Plaintiffs and the United States.

2. Application Of This Agreement. This Agreement applies to, is binding upon, and inures to the benefit of Plaintiffs (and their successors, assigns, and designees) and the United States.

3. Effective Date. The Effective Date of this Agreement shall be the date this Agreement is approved by the Court.

4. Definitions.

Unless otherwise expressly provided herein, terms used in the Agreement which are defined in CERCLA or its implementing regulations shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever the terms listed below are used in this Agreement, the following definitions shall apply.

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-75.

b. "Covered Matters" means any and all past or future claims for alleged Response Costs under federal or state law, any or all past or future claims for relief under the Resource Conservation and Recovery Act of 1976, as further amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), including injunctive relief, and any other claims under federal or state law relating to former activities of the United States on the Site, which could now or hereafter be asserted by Plaintiffs against the United States arising out of or in connection with conditions at the Site. Covered Matters also includes any and all claims that Plaintiffs could otherwise assert against the United States for alleged Response Costs under federal or state law for costs that Plaintiffs have incurred as of the date of this Agreement in connection with cleanup activities undertaken by Plaintiffs, at the direction of DTSC, on the Gonzalves property, a property that is adjacent to the Site and for which Plaintiffs have no ownership interest, and which is depicted on Attachment 2. Notwithstanding, "Covered Matters" shall not include: (i) claims arising from natural resource damages brought pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), or any equivalent state law; (ii) claims arising under CERCLA or any equivalent state law relating to the shipment of hazardous substances from the Site to off-site locations and/or the alleged presence of ordnance or similar contamination on

properties outside the Site (except with regard to past Response Costs incurred on the Gonzalves property); and (iii) claims arising from litigation or non-litigated claims against Granite or the United States by third parties alleging personal injury or property damage resulting from alleged exposure to hazardous substances, except to the extent that such costs qualify as Response Costs.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next day that is not a Saturday, Sunday or Federal holiday.

d. "Interest" means the rate that is specified for interest on investments of the Hazardous Substances Superfund established under subchapter A of Chapter 98 of Title 26 of the United States Code.

e. "Remedial Action" shall have the meaning set forth at 42 U.S.C. § 9601(24).

f. "Removal Action" means any action or activity within the scope of the term "removal" as that term is defined at 42 U.S.C. § 9601(23).

g. "Response Action" means any Removal Action or Remedial Action.

h. "Response Costs" means costs which are necessary to the performance of a Response Action associated with a release or threat of release of hazardous substances at the Site. This term includes costs which are incurred in a manner consistent with the National Contingency Plan, 40 C.F.R. Part 300, and recoverable as necessary costs of response under 42 U.S.C. § 9607.

i. "Site" means the property in Benicia, California, that is defined in the Amended Complaint (Attachment 3) as the "Facility" (See ¶ 12 and Exhibit 1 defining the "Project Site") and which the DTSC has defined as the "Tourtelot Project Site" in its certification of the completion of cleanup activity and as represented in the map that DTSC provided in connection with the certification of cleanup activity at the Site as the "Project Site" (Attachment 1).

j. "United States" means the United States of America, including all of its departments, agencies, and instrumentalities, their officers, directors and employees, and any predecessors, successors and assigns.

5. Release and Covenant Not To Sue by Plaintiffs. Effective on the date on which the United States makes the payment pursuant to Paragraph 8 of this Agreement, Plaintiffs hereby release, discharge, and covenant and agree not to assert (by way of the commencement of an action, the joinder of the United States in an existing action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity against the United States for Covered Matters, including, but not limited to, claims under CERCLA sections 107 and 113.

6. Indemnification by Plaintiffs. Effective on the date on which the United States makes the payment pursuant to Paragraph 8 of this Agreement, Plaintiffs further agree to indemnify and hold harmless the United States against any and all past or future claims, asserted against the United States by any other entity with respect to Covered Matters; provided, however, that Granite's total obligations pursuant to this Paragraph 6 shall not exceed \$50,000,000 (Fifty Million Dollars). The Plaintiffs agree to notify the United States sixty (60) days in advance or as soon thereafter as reasonably possible should any of them cease to exist as ongoing operations or undergo a change in circumstances that prevents any of them from being able to fulfill the obligations of this Paragraph 6.

7. Protection Against Claims.

a. The Parties acknowledge and agree that the payment to be made by the United States pursuant to this Agreement represents a good faith compromise of disputed claims and that the compromise represents a fair, reasonable, and equitable discharge for the Covered Matters addressed in this Agreement. With regard to any claims for costs, damages or other claims against the United States for Covered Matters under or addressed in this Agreement, the Parties agree that the United States is entitled to, as of the Effective Date of this Agreement, contribution protection pursuant to section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, whether by

statute or common law, extinguishing the United States' liability to persons not party to this Agreement. Any rights the United States or Granite may have to obtain contribution or otherwise recover costs or damages from persons not party to this Agreement are preserved.

b. The Parties agree to join in and/or support, as may be appropriate, such legal proceedings as necessary to secure the Court's approval and entry of this Agreement and to secure and maintain the contribution protection contemplated in this Agreement.

8. Payment.

a. Upon approval of this Settlement Agreement by the Court, the United States commits to pay \$50,000,000 (Fifty Million Dollars) to Granite. Such payment shall occur within a reasonable time after the Effective Date of this Agreement. Payment shall be in the form of a check or checks made payable to Pacific Bay Properties or by Electronic Funds Transfer in accordance with instructions provided by Plaintiffs' counsel.

b. If such payment is not made in full within ninety (90) days after the Effective Date of this Agreement, then interest on the unpaid balance shall be paid commencing on the 90th day after the Effective Date. Interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the United States Code.

c. Said payment by the United States is subject to the availability of funds appropriated for such purpose. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

9. Covenant Not to Sue by United States and Reservation. The United States hereby releases and covenants not to sue Plaintiffs for Covered Matters, except the United States specifically reserves its right to assert against Plaintiffs any claims or actions regarding the Site brought on behalf of the United States Environmental Protection Agency or a natural resource trustee.

10. Effect of Settlement/Entry of Judgment.

a. This Agreement was negotiated and executed by Plaintiffs and the United States in good faith and at arms length and is a fair and equitable compromise of claims, which were vigorously contested. This Agreement shall not constitute or be construed as an admission of liability by the Parties. Nor is it an admission or denial of any factual allegations set out in the Complaint or an admission of violation of any law, rule, regulation, or policy by any of the Parties to this Agreement.

b. Upon approval of this Agreement by the Court, this Agreement shall constitute a final judgment among the Parties with respect to the claims resolved in this Agreement.

c. Upon approval of this Agreement by the Court and receipt of the payment set forth in Paragraph 8, the parties shall jointly move to dismiss the Action with prejudice.

11. Notification to Plaintiffs. The United States shall notify the Plaintiffs in writing of any complaint that is filed against and served upon the United States relating to the Site as soon as practicable.

12. No Admission of Liability. The United States and the Plaintiffs agree that this Agreement, including any payments made pursuant to it and the negotiations and other communications related to it, is entered into without any admission of liability for any purpose as to any matter related to the Site or any other area, transaction or occurrence alleged in this Agreement.

13. No Use As Evidence. This Agreement represents the compromise of a disputed claim and nothing in this Agreement is intended to be, or shall be construed as, an admission or adjudication of any question of fact or law with respect to any liability or responsibility for the Site or any other area. This Agreement shall not be admissible in any proceeding other than in an action brought by the United States or the Plaintiffs to enforce this Agreement or in any proceeding where the United States is seeking to establish that it is entitled to contribution protection.

14. Non-Parties to This Agreement. Nothing in this Agreement is intended to be, nor shall be construed as a waiver, release or covenant not to sue for any claim or cause of action,

administrative or judicial, in law or in equity, which the United States or the Plaintiffs may have against any person, firm, partnership, trust, corporation or any other entity that is not a party to this Agreement.

15. Conflicts of Law. This Agreement shall be governed and construed under the laws of the United States.

16. Headings. Any paragraph headings or section titles to this Agreement are provided solely as a matter of convenience to the reader and shall not be construed to alter the meaning of any paragraph or provision of this Agreement.

17. Original Counterparts. This Agreement may be executed in any number of original counterparts, each of which shall be deemed to constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

18. Integration Provision. This Agreement, including any attachments, constitutes the entire Agreement between the United States and the Plaintiffs with respect to matters covered herein. All prior discussions, drafts and writings are specifically superseded by this Agreement and may not be used to vary or contest the terms of this Agreement. This Agreement may only be amended by a writing signed by all the parties hereto.

19. Representative Authority. The individuals signing this Agreement on behalf of the Parties hereby certify that they are authorized to bind their respective party to this Agreement.

20. Notification. Any notice required or provided for by this Agreement, including any change in address or identity of the party designated to receive notice for any of the Parties, shall be in writing, effective upon receipt, and sent to the following:

For Plaintiffs: Elaine Black Mills
Office of the General Counsel
Suite 1500, Parklane Towers West
Three Parklane Boulevard
Dearborn, MI 48126-2568

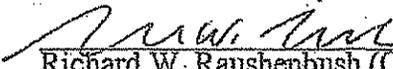
For Defendants: Chief
Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Attn: DJ# 90-11-6-17032

District Counsel
Office of Counsel
U.S. Army Corps of Engineers
1325 J Street, Room 1340
Sacramento, CA 95814

or such other person as either party may subsequently identify in writing to the other parties.

For the Plaintiffs:

Date: 12/20/04


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Telephone: (973) 639-1234

For the United States:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division

Date: 12/20/04

Michael B. Heister
Michael B. Heister, Attorney
United States Department of Justice
Environment & Natural Resources
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Environmental Defense Section
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(202) 514-1950

Respectfully Submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

Date: 12/20/04

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Date: 12/20/04

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Attorneys for Plaintiffs

ATTACHMENT 1



Department of Toxic Substances Control

Edwin F. Lowry, Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Terry Tamminen
Agency Secretary
CalEPA



Arnold Schwarzenegger
Governor

June 23, 2004

Mr. Scott Goldie
Senior Vice President
Pacific Bay Homes, LLC
938 Tyler Street, Suite 104
Benicia, California 94510

COMPLETION OF REMEDIAL ACTION FOR THE TOURTELOT CLEANUP PROJECT SITE, BENICIA, CALIFORNIA

Dear Mr. Goldie:

Thank you for providing the Department of Toxic Substances Control (DTSC) with the Final Technical Memorandum and Implementation Report (Final Report) dated June 18, 2004 for our review. The Final Report was prepared by Northgate Environmental Management, Incorporated for Pacific Bay Homes, LLC. The Final Report documents the completion of the ordnance and explosives (OE) cleanup and the completion of the non-ordnance and explosives (Non OE) cleanup for the entire Tourtelot Cleanup Project Site (Project Site) in Benicia, California. The OE and Non OE cleanup activities were specified in the Final Remedial Action Plan (RAP) approved by DTSC on January 29, 2002, the Final Tourtelot Project Site Ordnance and Explosives Remedial Design Document (OERDD) approved by DTSC on March 21, 2002, the Final Tourtelot Project Site Non Ordnance and Explosives Remedial Design Document (Non-OERDD) approved by DTSC on June 7, 2002, and the Final Environmental Impact Report (EIR) certified by DTSC on December 19, 2001.

DTSC approves the Final Report and considers the remediation of the Tourtelot Cleanup Project Site complete. Pacific Bay Homes, LLC has reimbursed DTSC's oversight costs through December 31, 2003. The costs of oversight from January 1, 2004 through completion of the remediation will be provided to Pacific Bay Homes, LLC for payment in the next billing cycle.

Mr. Scott Goldie
June 23, 2004
Page 2

The Project Site includes residential land use areas consisting of 417 residential lots, a 2.5-acre park site, and open space parcels consisting of approximately 100 acres. (See attached map depicting the Unrestricted Areas and the Restricted Areas).

DTSC has overseen remedial activities conducted at the Project Site and has directed the quality assurance activities. DTSC has reviewed the Final Report and has determined that all appropriate response actions have been completed for occupancy of homes at the Project Site, that all acceptable engineering practices were implemented and that no further removal/remediation is necessary at the Project Site. DTSC has determined that the cleanup of the Project Site allows for an unrestricted use of the 417 residential lots and 2.5-acre park site and an open space access path.

As part of the Remedial Investigation/Feasibility Study (RI/FS), RAP and EIR process, a number of different cleanup alternatives were evaluated based on factors such as potential environmental affects, and cost and effectiveness in protecting human health. Based on input from members of the public, the Tourtelot Community Advisory Group (CAG), the United States Army Corps of Engineers (USACE) and the Regional Water Quality Control Board (RWQCB), alternative 5A was selected by DTSC. Alternative 5A, while protective of human health, resulted in less remedial grading in the open space areas due to aesthetic and environmental concerns. DTSC requires that institutional controls be applied to the restricted open space areas and two paved areas, a small portion of McAllister Drive in D-1 and a portion of the Land Bridge.

The institutional controls are set out in four documents: the Operations and Maintenance Plan, the Covenant to Restrict Property, the Contingency Action Plan and the Operations and Maintenance Agreement. These documents outline future roles and responsibilities for the management of these areas, including education of City of Benicia staff and the public; restrict by deed the use of the property to open space; impose safety controls on any future excavation activities; and provide guidance for future decisions. Pacific Bay Homes, LLC has given DTSC acceptable financial assurance that it will perform the duties given to it in the Operation and Maintenance Agreement. DTSC is satisfied that these institutional controls meet the objectives of the RAP.

Mr. Scott Goldie
June 23, 2004
Page 3

DTSC appreciates Pacific Bay Homes, LLC and their affiliates' efforts to clean the Project Site to a level consistent with the zoned land uses. If you have any questions, please contact me by phone at (916) 255-3750.

Sincerely,



Frederick S. Moss
Division Chief
Office of Military Facilities

Attachments

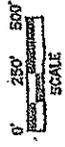
cc: Mr. John Esparza
United States Army Corps of Engineers
1325 J Street
Sacramento, California 95814

Mr. Gary Riley
San Francisco Regulation Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

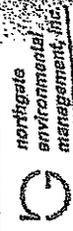
EXPLANATION

- Restricted Areas
- Unrestricted Areas
- Wetland

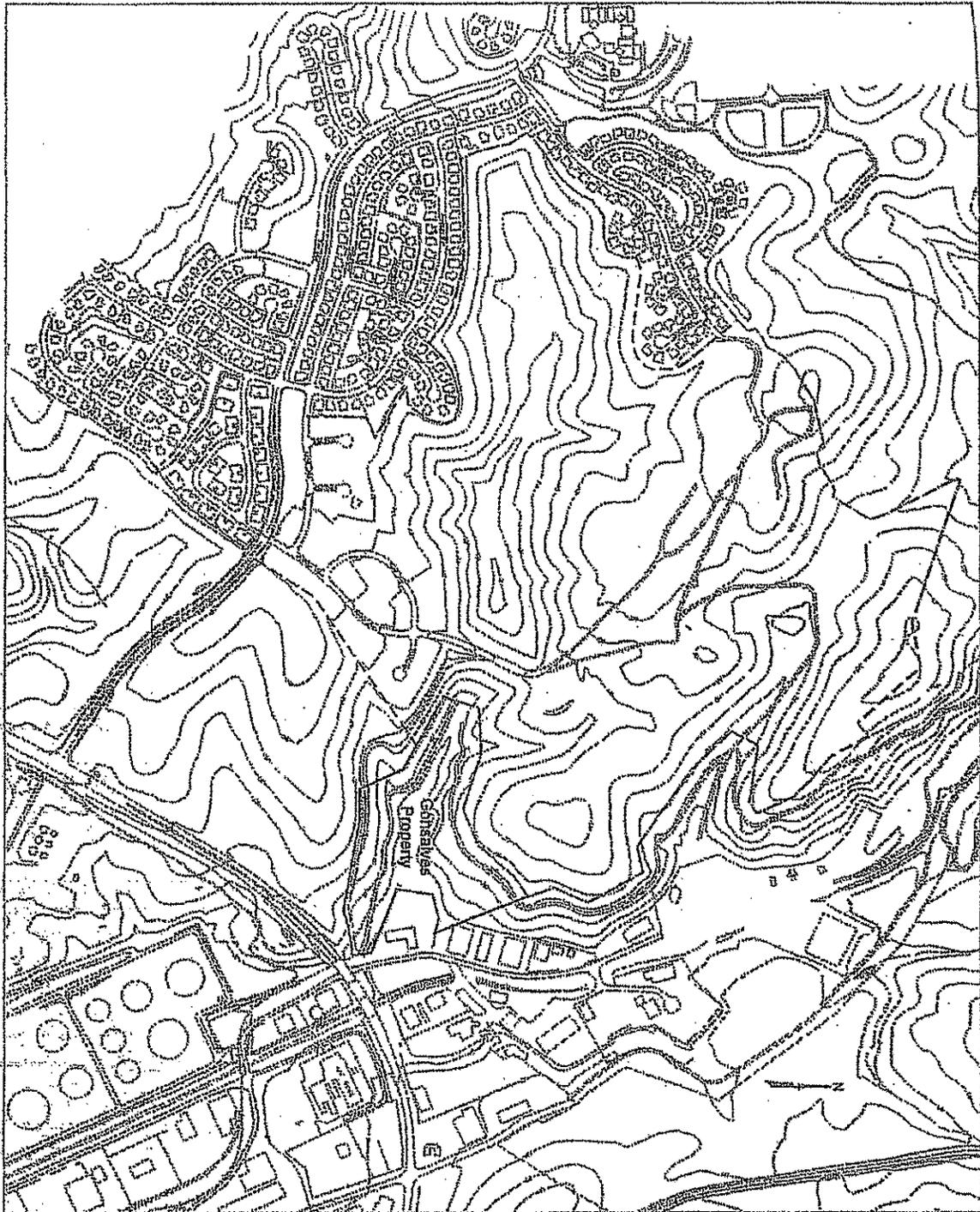
Date of Topography, July 1988
(Cartwright, Aerial)



MAP OF RESTRICTED AND UNRESTRICTED AREAS
Tourlet Cleanup Project
Benicia, California
June, 2004



ATTACHMENT 2



EXPLANATION

- Project Site Boundary
- - - Topographic Contour



Date of Topography July
1959 (Contour Interval)

Location of Gonsalves Property

Thousand Springs Project
Boulder, Colorado
November 2004
Project No. 113150

Northgate

www.northgate.com

ATTACHMENT 3

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

FILED

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DEC 20 2004

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK *OF* FUD

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Attorneys for Defendants UNITED
STATES OF AMERICA and the DEPARTMENT
OF THE ARMY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRANITE MANAGEMENT CORPORATION;
PACIFIC BAY PROPERTIES; FN PROJECTS,
INC.; and PACIFIC BAY HOMES, LLC;

Plaintiffs,

v.

UNITED STATES OF AMERICA, and the
DEPARTMENT OF THE ARMY,

Defendants.

CIV. S-03-0866 FCD PAN

SETTLEMENT AGREEMENT
AND CONSENT ORDER

This Settlement Agreement and Consent Order ("Agreement") is made, as of the Effective Date of this Agreement, as defined in Paragraph 3 below, between Plaintiffs Granite Management Corporation, Pacific Bay Properties, FN Projects, Inc., and Pacific Bay Homes, LLC, ("Plaintiffs" or "Granite") and Defendants United States of America and the Department of the Army ("United States"), collectively referred to as "the Parties," as defined herein.

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9 Telephone: (973) 639-1234
10 Facsimile: (973) 639-7298

11 Attorneys for Plaintiffs
GRANITE MANAGEMENT CORPORATION,
12 PACIFIC BAY PROPERTIES, FN PROJECTS, INC.,
and PACIFIC BAY HOMES, LLC

ORIGINAL LODGED

13

SEP 30 2003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

14 GRANITE MANAGEMENT
15 CORPORATION; PACIFIC BAY
16 PROPERTIES; FN PROJECTS, INC.; AND
17 PACIFIC BAY HOMES, LLC,

18 Plaintiffs,

19 v.

20 UNITED STATES OF AMERICA, AND
21 THE DEPARTMENT OF ARMY,

22 Defendants.

CIVIL ACTION NO. S-03-866 (FCD PAN)

AMENDED COMPLAINT

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1 Plaintiffs, Granite Management Corporation; Pacific Bay Properties; FN Projects,
2 Inc.; and Pacific Bay Homes, LLC; by way of Amended Complaint against Defendants, United
3 States of America and the Department of the Army, state as follows:

4 NATURE OF THE ACTION

5 1. This is an action under Sections 107(a) and 113(f) of the Comprehensive
6 Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§
7 9601-9675 ("CERCLA"); and under Section 7002(a)(1)(B) of the Solid Waste Disposal Act, as
8 amended by the Resource Conservation and Recovery Act of 1976, as further amended by the
9 Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6972(a)(1)(B).

10 2. Plaintiffs seek to recover from the Defendants necessary costs of response
11 that the Plaintiffs have incurred in a manner consistent with the National Contingency Plan
12 ("NCP"), 40 C.F.R. Part 300, caused by the release or threatened release of hazardous substances
13 on and adjacent to the Tourtelot Property (the "Facility"), located in Benicia, California, and a
14 declaratory judgment on liability for response costs in accordance with the Section 113(g)(2) of
15 CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding on any subsequent action or actions by
16 the Plaintiffs against the Defendants to recover further response costs. Plaintiffs further seek to
17 compel Defendants to investigate and remediate any such hazardous substances that may be
18 present at the Facility consistent with the requirements of the California Department of Toxic
19 Substances Control ("DTSC"), the United States Environmental Protection Agency ("EPA"), and
20 other such governmental agencies that may seek to impose requirements upon the Facility with
21 respect to environmental response actions.

22 3. From approximately 1849 to 1964 the United States operated the Benicia
23 Arsenal on and adjacent to the Facility for, among other things, the use and disposal of Army
24 ordnance and other hazardous substances. Defendants' operations on and adjacent to the Facility
25 resulted, within the meaning of CERCLA, in Defendants' ownership or operation of the Facility
26 at the time of disposal of hazardous substances on, at or around the Facility, in Defendants'
27 arrangement for disposal or treatment of hazardous substances at the Facility, and in Defendants'
28 acceptance of hazardous substances for transport for disposal or treatment at the Facility.

1 Defendants' operations on and adjacent to the Facility further resulted, within the meaning of
2 RCRA, in Defendants' contribution to the past or present handling, storage, treatment,
3 transportation, or disposal of solid or hazardous waste at the Facility.

4 4. Plaintiffs acquired the Facility in various parcels in or after 1971, at which
5 times Plaintiffs did not know and had no reason to know of the release or threatened release of
6 hazardous substances at the Facility, and at which times Plaintiffs exercised due care with
7 respect to such hazardous substances. Subsequent to Plaintiffs' acquisition of the Facility,
8 Plaintiffs have been required to incur response costs, and will continue to be required to incur
9 response costs, at the Facility as a result of the release or threatened release of hazardous
10 substances by Defendants. Plaintiffs therefore are entitled to recover all necessary costs of
11 response from Defendants pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), to obtain
12 contribution from the Defendants pursuant to CERCLA Section 113(f)(1), 42 U.S.C. §
13 9613(f)(1), and to obtain an order compelling Defendants to investigate such releases and
14 conduct any remediation as may be required by the DTSC, EPA, or other governmental agency.

15 JURISDICTION AND VENUE

16 5. This Court has jurisdiction of this action under Sections 107(a) and 113(b)
17 of CERCLA, 42 U.S.C. §§ 9607(a) & 9613(b); Section 7002(a)(1)(B) of RCRA, 42 U.S.C.
18 § 6972(a)(1)(B); and under 28 U.S.C. § 1331. In addition, the Declaratory Judgments Act, 28
19 U.S.C. § 2201, and Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), authorize this Court
20 to grant Plaintiffs declaratory relief.

21 6. Venue in this Court is proper pursuant to Section 113(b) of CERCLA, 42
22 U.S.C. § 9613(b), and Section § 7002(a) of RCRA, 42 U.S.C. § 6972(a), because Defendants
23 may be found, and because the releases or threatened releases alleged herein occurred, in the
24 Eastern District of California.

25 PARTIES

26 7. Plaintiff Granite Management Corporation is a corporation organized and
27 existing under the laws of the State of Delaware, with a principal place of business in Dearborn,
28 Michigan. In or about 1995 Granite Savings Bank, which was formerly known as First

1 on and adjacent to the Facility. During this period, Defendants acquired approximately 2,700
2 acres of land for use as an ordnance storage, issuance and transshipment depot, and for artillery
3 testing and demolition of damaged and obsolete munitions.

4 14. From approximately 1944 to 1960 Defendant Department of the Army
5 leased portions of the Facility to conduct operations relating to the Benicia Arsenal. In
6 particular, the Army tested artillery including Howitzers thereon; destroyed defective and excess
7 ordnance by open burning, detonation, and other means; disposed of 2,4,6-Trinitrotoluene (TNT)
8 on the Facility; and buried scrap materials and other waste at the Facility. These activities
9 resulted in the generation and disposal of hazardous substances including but not limited to lead
10 and other metals, TNT and other explosive compounds, and unexploded ordnance on the
11 Facility.

12 **Plaintiff's Acquisition of The Facility**

13 15. Plaintiff Granite purchased approximately 110 acres of the Facility from
14 the Tourtelot family in 1981 for the purpose of residential development. This parcel was joined
15 with an adjacent parcel acquired by Granite through foreclosure in or about 1971.

16 16. At the time Plaintiffs acquired title to the various parcels comprising the
17 Facility, Plaintiffs did not know and had no reason to know that any hazardous substance had
18 been released or disposed of on, in, or at the Facility.

19 17. At all times material hereto, Plaintiffs exercised due care with respect to
20 the release or threatened release of hazardous substances at the Facility, and took precautions
21 against foreseeable acts and omissions of third parties with respect to a release or threatened
22 release of hazardous substances at the Facility.

23 **Discovery of Hazardous Substances and Environmental Response Actions at the Facility**

24 18. In 1989, as part of an environmental impact review performed by the City
25 of Benicia, several small military-related concrete structures were described as being located at
26 the Facility.

27 19. In May 1996, contractors for Granite discovered a 155-millimeter dummy
28 shell on the northern part of the Facility. Granite duly contacted the local authorities and

1 implemented security measures.

2 20. Also in or about May 1996, the California Department of Toxic
3 Substances Control ("DTSC") was notified of the possible presence of unexploded ammunition
4 and flares at the Facility. Consequently, the DTSC Office of Military Facilities inspected the
5 Facility and observed concrete test tunnels and the 155-mm dummy shell. Subsequent
6 investigations revealed additional dummy shells and unexploded live ordnance at the Facility.

7 21. On June 1, 1999, the DTSC issued an Imminent and/or Substantial
8 Endangerment Determination and Remedial Action Order ("Order") to the Department of the
9 Army, Granite, FN Projects, and Pacific Bay Homes, establishing requirements for the
10 remediation of the Facility.

11 22. Pursuant to the Order, Granite and its affiliated entities completed various
12 environmental studies including site-specific safety and health plans; remedial
13 investigation/feasibility study work plans; a removal action work plan; a Final Remedial
14 Investigation/Feasibility Study; and, in January 2002, a Remedial Action Plan that was approved
15 by DTSC.

16 23. Investigations conducted at the Facility indicate that "hazardous
17 substances" within the meaning of CERCLA, 42 U.S.C. § 9601(14), and "hazardous waste," as
18 that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), or "solid waste," as that
19 term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), such as lead and other
20 metals, TNT and other explosive compounds, and unexploded ordnance have been disposed of at
21 the Facility.

22 24. As of the date of this Complaint, Plaintiffs have expended over \$30
23 million in environmental response costs at the Facility. Plaintiffs will be required to expend
24 additional future response costs to complete the work in accordance with the requirements of the
25 DTSC.

26 25. On or before May 6, 1997, Granite notified the United States Department
27 of Defense ("DOD") that it was incurring response costs in a manner consistent with the National
28 Contingency Plan to investigate and cleanup military ordnance at the Facility, and that DOD was

1 a potentially responsible party ("PRP") under CERCLA for such response costs.

2 26. Despite Plaintiff's letter, neither the DOD nor any branch or department of
3 the United States government has contributed any funds to implement the Order or to reimburse
4 the DTSC's oversight costs as required pursuant to the Order.

5 LIABILITY UNDER CERCLA

6 27. Plaintiffs repeat and reallege the allegations contained in paragraphs 1
7 through 25 of this Complaint as if fully set forth herein.

8 28. Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), provides, in
9 pertinent part, that "any person who at the time of disposal of any hazardous substance owned or
10 operated any facility at which such hazardous substances were disposed of ... shall be liable for
11 ... any other necessary costs of response incurred by any other person consistent with the
12 national contingency plan[.]"

13 29. Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), provides, in
14 pertinent part, that "any person who by contract, agreement, or otherwise arranged for disposal
15 or treatment ... of hazardous substances owned or possessed by such person ... shall be liable for
16 ... any other necessary costs of response incurred by any other person consistent with the
17 national contingency plan[.]"

18 30. Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), provides, in
19 pertinent part, that "any person who accepts or accepted any hazardous substances for transport
20 to disposal or treatment facilities ... from which there is a release, or a threatened release ... shall
21 be liable for ... any other necessary costs of response incurred by any other person consistent
22 with the national contingency plan[.]"

23 31. Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), provides, in
24 pertinent part, that "[a]ny person may seek contribution from any other person who is liable or
25 potentially liable under section [107(a) of CERCLA.]"

26 FIRST CAUSE OF ACTION

27 32. Plaintiffs repeat and reallege the allegations contained in paragraphs 1
28 through 30 of this Complaint as if fully set forth herein.

1 33. Each Defendant is a "person" within the meaning of Section 101(21) of
2 CERCLA, 42 U.S.C. § 9601(21).

3 34. The Facility is a "facility" within the meaning of Section 101(9) of
4 CERCLA, 42 U.S.C. § 9601(9).

5 35. Releases or threatened releases of hazardous substances into the
6 environment have occurred at the Facility within the meaning of Section 101(22) of CERCLA,
7 42 U.S.C. § 9601(22).

8 36. Plaintiffs have undertaken, and continue to undertake, response actions at
9 the Facility in response to releases or threatened releases of hazardous substances, and have
10 incurred and are incurring necessary costs of response consistent with the National Contingency
11 Plan.

12 37. At various times over the course of more than 100 years, from
13 approximately 1849 to 1964, hazardous substances were disposed of at the Facility at the time
14 Defendants owned or leased parts or all of the Facility and managed, directed or otherwise
15 conducted operations at the Facility, including operations specifically related to the acquisition,
16 storage, use and disposal (including leakage) of hazardous substances. As such, Defendants are
17 persons who at the time of disposal of hazardous substances owned or operated the Facility, and
18 therefore are person who owned or operated the Facility within the meaning of Section 107(a)(2)
19 of CERCLA, 42 U.S.C. § 9607(a)(2).

20 38. At all times material hereto, Plaintiffs exercised due care with respect to
21 the release or threatened release of hazardous substances at the Facility, and took precautions
22 against foreseeable acts and omissions of third parties with respect to release or threatened
23 release of hazardous substances at the Facility, within the meaning of Section 107(b)(3) of
24 CERCLA, 42 U.S.C. § 9607(b)(3).

25 39. At the time Plaintiffs acquired title to the various parcels comprising the
26 Facility, Plaintiffs did not know and had no reason to know that any hazardous substance had
27 been released or disposed of on, in, or at the Facility, within the meaning of Section
28 101(35)(A)(i) of CERCLA, 42 U.S.C. § 9601(35)(A)(i).

1 However, if Plaintiffs, or any one of them, are found not to be entitled to the defense to liability
2 under Section 107(b)(3) of CERCLA, and therefore are found not to be entitled to assert a Cause
3 of Action against Defendants under Section 107(a) of CERCLA, then, pursuant to Section
4 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), Plaintiffs or certain of Plaintiffs are entitled to
5 contribution from Defendants in connection with the Facility, and all response costs incurred by
6 Plaintiffs or for which Plaintiffs are deemed liable should be allocated among Defendants and
7 Plaintiffs using such equitable factors as the Court determines are appropriate.

8 FIFTH CAUSE OF ACTION

9 (INJUNCTIVE RELIEF UNDER RCRA § 7002(A)(1)(B))

10 49. Plaintiff incorporates by reference Paragraphs 1 to 48 above, inclusive, as
11 though set forth fully herein.

12 50. Defendants United States and the Department of the Army are each a
13 "person" as defined in 42 U.S.C. § 6903(15).

14 51. The presence of hazardous and/or solid waste at the Facility is a direct and
15 proximate result of the actions of Defendants at the Facility and the adjacent Benicia Arsenal.
16 Defendants are or were an "operator" of the Facility, and a "generator" and "transporter" of
17 Hazardous and Solid Wastes disposed of at the Facility within the meaning of Section
18 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B). As such, Defendants are each a person who
19 has contributed to the past or present handling, storage, treatment, transportation, or disposal of
20 solid or hazardous waste at the Facility.

21 52. Defendants' past or present handling, storage, treatment, transportation, or
22 disposal of solid or hazardous waste at the Facility has resulted in actual or threatened release of
23 hazardous substances at the Facility. DTSC has concluded, pursuant to paragraph 3.4 of its
24 Order of June 1, 1999, that "[t]he actual and/or threatened release of hazardous substances at or
25 from the [Facility] may present an imminent or substantial endangerment to the public health or
26 welfare or to the environment."

27 53. Over ninety days ago, by the letter dated May 8, 2003, Plaintiffs gave
28 Defendants the requisite Notice of Endangerment in accordance with RCRA § 7002(b)(2)(A), 42

1 U.S.C. § 6972(b)(2)(A) and 40 C.F.R. Part 240, § 254.1 to the Administrator of the U.S. EPA;
2 the Regional Administrator for Region 9 of the U.S. EPA; the Attorney General of the United
3 States; the Attorney General of the State of California; the U.S. Attorney for the State of
4 California; the Secretary of the California Environmental Protection Agency; and the Secretary
5 of the Army, informing them of environmental conditions and allegations at the Facility and of
6 Plaintiffs' intent to bring this claim against Defendants. Defendants have not agreed to
7 investigate the hazardous substances and hazardous or solid waste at the Facility and conduct
8 remediation as necessary.

9 54. Plaintiffs have standing to sue because they been alleged by DTSC and
10 others to be a party responsible for the investigation and remediation of the Facility, and have
11 incurred and will continue to incur substantial costs as a result thereof.

12 55. Plaintiffs seek injunctive relief under RCRA ordering Defendants to
13 investigate, abate and remediate any endangerment posed by the environmental conditions at the
14 Facility and to comply, at their own expense, with the DTSC's and other regulatory agencies'
15 demands.

16 56. Pursuant to 42 U.S.C. § 6972(e), Plaintiffs seek an award of the costs of
17 this litigation including but not limited to reasonable attorneys' fees and experts' fees, and
18 including but not limited to similar fees to monitor Defendants' compliance with any orders or
19 judgments issued by DTSC or this Court.

20 WHEREFORE, Plaintiffs demand judgment in their favor and against Defendants
21 as follows:

22 (1) Awarding to Plaintiffs, pursuant to Section 107(a) of CERCLA, 42 U.S.C.
23 § 9607(a), recovery from Defendants of all responses costs incurred by Plaintiffs at the Facility;
24 or, alternatively,

25 (2) Allocating among Plaintiffs and Defendants and any other persons found
26 to be liable all response costs incurred at or with respect to the Facility pursuant to Section
27 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and issuing an Order requiring Defendants to pay
28 such amounts to Plaintiffs; and

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(3) Entering a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against Defendants and in favor of Plaintiffs declaring, adjudging, and decreeing that Defendants are liable to Plaintiffs for response costs at the Facility, such judgment to be binding on any subsequent action or actions to recover further response costs; and

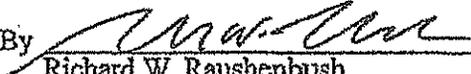
(4) Ordering Defendants to investigate, abate and remediate any endangerment posed by the Facility and to comply, at their expense, with the DTSC's and other regulatory agencies' demands regarding the Facility; and

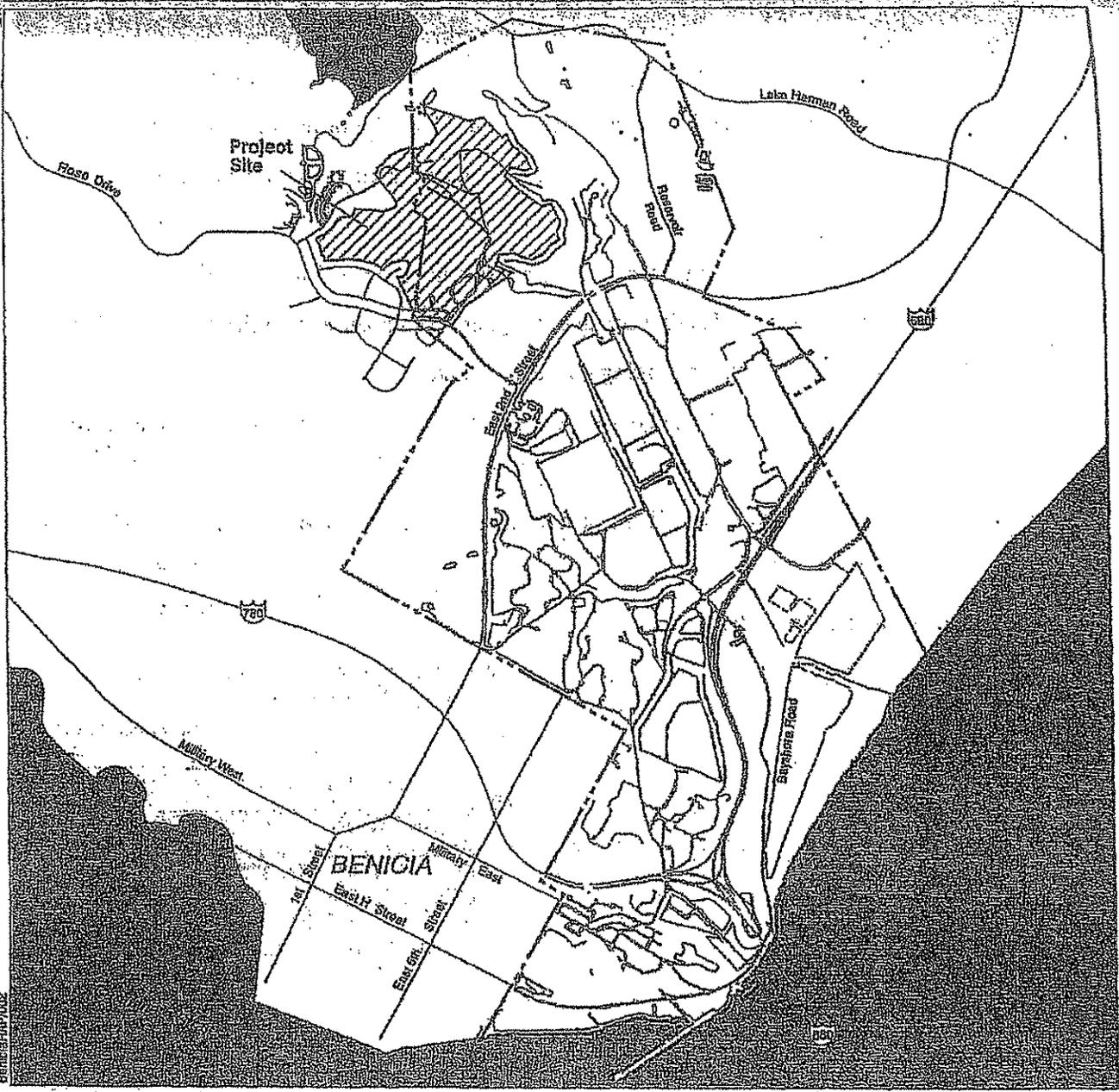
(5) Awarding Plaintiffs interest, attorneys' fees, experts' fees and costs of suit; and

(6) Awarding Plaintiffs any other such relief as the Court may deem just and proper.

Dated: September 29, 2003

LATHAM & WATKINS LLP
Richard W. Raushenbush

By 
Richard W. Raushenbush
Attorneys for Plaintiffs
GRANITE MANAGEMENT
CORPORATION, PACIFIC BAY
PROPERTIES, FN PROJECTS, INC., AND
PACIFIC BAY HOMES, LLC



EXPLANATION

-  Interstate Highway
-  Former Benicia Arsenal Boundary (estimated)
-  Project Site

Project Site Location Map

January 2002

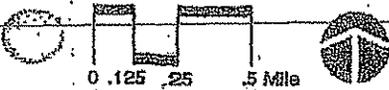


Figure 1-2