

**California's Land Reuse and Revitalization Act (CLRRA) Agreement for Site
Located at 22958 Saklan Road, in Hayward California**

Docket No.HSA -CLRRA 05/06-079

Recitals

- A. The California Land Reuse and Revitalization Act of 2004 (CLRRA) was enacted by Assembly Bill No. 389, Montanez, on September 23, 2004.¹
- B. CLRRA provides for an eligible bona fide purchaser (BFP), innocent landowner (ILO), or contiguous property owner (CPO) (a "Person" under this Agreement) to qualify for specified immunities from liability for certain response costs or damage claims under applicable state statutes.
- C. Under CLRRA, a Person seeking the immunities provided by this Act is required to enter into an agreement. By entering into this Agreement, the Parties acknowledge and agree that La Vista, LLC meets the CLRRA requirement to enter into such an agreement.
- D. The CLRRA program is a voluntary program afforded to qualifying persons and does not alter existing state law regarding liability for releases or discharges of hazardous substances or hazardous materials not addressed by this Agreement.

La Vista, LLC and the Department of Toxic Substances Control ("DTSC") hereby agree as follows:

1. Introduction

- 1.1 **Purpose:** The purpose of this Agreement is to specify the process that will be used to evaluate the Site located at 22958 Saklan Road, in Hayward, California ("Site") under CLRRA, facilitate the assessment and remediation of the Site, provide a framework for terms and conditions for qualifying for immunities afforded under CLRRA and provide a framework for reimbursement of DTSC's costs.
- 1.2 **Parties:** This Agreement is entered into by La Vista, LLC and DTSC, who are collectively the "Parties" to this Agreement.
- 1.3 **Jurisdiction:** Health and Safety Code ("HSC") 25395.92 authorizes DTSC to enter into an agreement with La Vista, LLC to perform an assessment and prepare and implement a Response Plan, if necessary.

¹ Assembly Bill No. 389 added Chapter 6.82 (commencing with §25395.60) and Chapter 6.83 (commencing with §25395.110) to Division 20 of the Health and Safety Code.

- 1.4 Agreement Not an Admission: Entry into this Agreement by La Vista, LLC does not constitute an admission of fact or liability or conclusion of law for any purpose or proceeding nor does it limit a defense to liability that may be available to La Vista, LLC under any other provision of law.
- 1.5 Agreement Not a Limitation: Nothing in this Agreement limits DTSC's authority to conduct a response action that DTSC determines is necessary to protect public health and safety or the environment pursuant to an applicable statute. Except as expressly stated in this Agreement, nothing in this Agreement limits DTSC's authority to issue an order or take any other action under any provision of law to protect public health and safety or the environment or to pursue any existing legal, equitable or administrative remedies pursuant to state or federal law.

2. Definitions

- 2.1 Citation to Health & Safety Code: Unless otherwise specified, definitions of terms used in this Agreement are those set forth in HSC, Division 20, Chapters 6.82 and 6.83.
- 2.2 Applicable Statute: "Applicable statute" means the statutory provisions listed in HSC §25395.66(a)-(e).

3. Findings

- 3.1 Site Description: The approximately 3.5 acre Site is located at 22958 Saklan Road and consists of four legal parcels defined on the Alameda County Assessor's maps as Assessor Parcel Numbers 441-0003-012, 441-0003-013, 441-0003-014 and 441-003-015. The Site is currently paved with a warehouse and pickle processing buildings. A map of the Site is attached as Exhibit A. On or before 12/22/05, La Vista, LLC plans to acquire the Site from the current owners.
- 3.2 Site History: On October 24, 2005, DTSC received La Vista, LLC's complete application, a Phase I Environmental Site Assessment ("Phase I Report"), dated March 2005, prepared by West Environmental Services & Technology, Inc. ("West") and three draft tables presenting analytical data from a Draft Site Assessment. This information provided sufficient information for DTSC, pursuant to HSC §25395.92(c), to prepare this Agreement, to determine that the Site is an eligible site under HSC §25395.79.2 and to determine that La Vista, LLC meets the conditions that apply as of the effective date of this Agreement to qualify as a Bona Fide Purchaser under HSC §25395.69. In summary, agricultural uses occupied the Site up until the 1950s when it was converted to use as a food processing facility. Kruger Foods, Inc. processed cucumbers into pickles on the Site until 2004. The site investigation revealed elevated levels of volatile organic compounds ("VOCs") in the groundwater underlying the Site, including tetrachloroethene of up to 23 parts per billion (ppb) and trichloroethene of up to

4.83 ppb. VOCs were also identified in soil gas samples collected at the Site. To date, no environmental regulatory agency has been involved with the Site.

- 3.3 Eligibility of Site: Based on the information submitted in the application, the Phase I Report and three tables presenting analytical data from a draft Site Assessment, DTSC has determined that the Site meets the definition of a site specified under HSC §25395.79.2. In particular, DTSC finds that the former food processing business on the Site has been closed for over a year. Redevelopment of this-Site is complicated by the presence of hazardous materials. The Site meets the definition of an “infill” Site in that it is located in the incorporated City of Hayward in the urban San Francisco Bay Area.
- 3.4 La Vista, LLC as a Bona Fide Purchaser: Based on the information submitted in the application and Phase I Report, DTSC has determined that La Vista, LLC meets the definition of a Bona Fide Purchaser in that La Vista, LLC made all appropriate inquiries pursuant to HSC §25395.65 and meets the conditions under HSC §25395.80 that apply as of the effective date of this Agreement. La Vista, LLC meets these conditions in that La Vista, LLC made all appropriate inquiries prior to purchasing the Site; acquired the Site after January 1, 2005; the release of hazardous substances occurred prior to La Vista, LLC’s ownership of the Site; La Vista, LLC is not liable or in any way affiliated with any other person potentially liable for the contamination at the Site under the provisions of CLRRRA; and La Vista, LLC agrees to exercise appropriate care with respect to release or threatened release of hazardous materials at the Site; provide full cooperation, assistance and access for response action or natural resource restoration; comply with land use controls and not to impede the effectiveness of any remedy; comply with information requests or subpoenas; provide all notices and satisfy reporting requirements.

4. Immunities

- 4.1 Attachment of Immunities: Because La Vista, LLC qualifies as a Bona Fide Purchaser under 25395.69 and 25395.80, under HSC §25395.81(c), immunities attach at the time this Agreement is fully executed. The immunities are those described in HSC §25395.81.
- 4.2 Immunities in Effect: Pursuant to HSC §§25395.81(c) and 25395.93, immunities remain in effect unless one or more of the following occurs: La Vista, LLC withdraws pursuant to HSC § 25395.93(a) or DTSC withdraws pursuant to HSC § 25395.93(d); this Agreement is terminated pursuant to HSC § 25395.81(c)(2) before a finding of no further action or a certificate of completion is issued; or pursuant to HSC § 25395.81(c), La Vista, LLC receives a notice from DTSC of an unapproved material deviation from the Agreement and fails to cure such unapproved material deviation within a reasonable period of time. The reasonableness of a period of time to cure given in a notice of unapproved material deviation is subject to the dispute resolution procedures of Section 2.0 of Exhibit D. Pursuant to HSC § 25395.82, La Vista, LLC will remain eligible for immunity if a de minimis release of hazardous materials occurs at the Site during

a response action and DTSC determines that all necessary response actions to address the release have been taken. Additionally, pursuant to HSC § 25395.82(b), La Vista, LLC will remain eligible for immunity if either of the following occur: i) a release of hazardous materials that poses an unreasonable risk is discovered before DTSC issues a certification of completion or makes a finding of no further action and the release is appropriately resolved to the satisfaction of DTSC; or ii) a release of hazardous materials that poses an unreasonable risk is discovered after DTSC makes a no further action finding or issues a certificate of completion and La Vista, LLC did not cause or contribute to the release and the release is appropriately resolved to the satisfaction of DTSC.

- 4.3 Chapter 6.82 Repeal: Immunities that attach at the time this Agreement is fully executed shall continue after January 1, 2010, the date Chapter 6.82 is repealed provided La Vista, LLC continues to be in compliance with the requirements of then-former Chapter 6.82, all approved response plans and all other applicable laws.
- 4.4 Effect of Fraud: La Vista, LLC does not qualify as a Bona Fide Purchaser and does not qualify for immunity if La Vista, LLC commits fraud, intentional nondisclosure, or misrepresentation to DTSC with respect to any requirements under Chapter 6.82.

5. Activities

- 5.0 Activities to be Conducted: La Vista, LLC and DTSC agree that the following activities are to be conducted under this Agreement in accordance with the schedule contained in Exhibit B:
- 5.1 Submittal of Existing Data: La Vista, LLC will make available to DTSC, and shall provide copies of, all nonprivileged known data and information concerning contamination on the Site in La Vista, LLC's possession, whether or not such data and information was developed pursuant to this Agreement. La Vista, LLC will identify privileged documents that it is not submitting to DTSC. La Vista, LLC will further inform DTSC of any other known reports and documents, not in its possession, pertinent to any release or threatened release on the Site, including the name of the document, if known, and the identity and address of the person/entity with possession of the document, if known.
- 5.2 Site Assessment: La Vista, LLC will submit to DTSC existing site assessment information and a Site Assessment Plan that contains all necessary information required under HSC §25395.94(b) and (c), including an evaluation of hazardous materials releases and threatened releases, an evaluation of unreasonable risk, adequate site characterization, documentation of the findings, and reasonably available information about the Site, including a risk assessment, where appropriate, a statement about reasonably anticipated foreseeable uses of the Site, and reasonable characterization of underlying impacted groundwater including present and anticipated beneficial uses. If DTSC requires a health risk

assessment (“HRA”), La Vista, LLC shall prepare an HRA in accordance with HSC §25356.1.5(b), (c), and (d).

- 5.2.1 Site Assessment Work Plan: La Vista, LLC has submitted a draft Site Assessment Workplan to conduct a site assessment in accordance with the requirements of HSC §25395.94. DTSC will review the Workplan to assess whether there is sufficient information to determine if an HRA is required. If there is not sufficient information, the Workplan shall be modified to include decision criteria for determining whether an HRA needs to be prepared. Upon DTSC’s approval, La Vista, LLC will implement the Site Assessment Workplan to provide sufficient information for DTSC to determine if a response action is necessary to address any unreasonable risk from hazardous materials at the Site. La Vista, LLC agrees to submit a Report of Findings after completing the work in the Site Assessment Workplan. DTSC will review the Report of Findings and determine whether a response action is necessary. The Report of Findings and the Site Assessment Workplan together will constitute the Site Assessment Plan required under 25395.94.
- 5.2.2 Analysis of Report of Findings: Upon reviewing the Report of Findings submitted under section 5.2.1, DTSC will determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the Site. If DTSC determines that there is no unreasonable risk and there are no hazardous materials at the Site at levels that are not suitable for unrestricted use of the Site, DTSC will make a finding that no further action is necessary at the Site.
- 5.2.3 Land Use Controls: If DTSC determines there are hazardous materials on the Site at levels that are not suitable for unrestricted use, but that are suitable for the reasonably anticipated foreseeable use of the Site based on current and projected land use and zoning designations, DTSC will make a finding that no further action is necessary only if La Vista, LLC has executed and recorded, pursuant to HSC §25395.99, a land use control instrument that restricts or imposes obligations on present or future uses or activities on the Site that DTSC determines to be appropriate. La Vista, LLC agrees to meet the public comment and public participation requirements of HSC §25395.96 prior to executing and recording any land use control. Within fifteen (15) calendar days after recording the land use control, DTSC will state in writing that executing and recording the land use control constitutes appropriate care for the purposes of HSC §25395.67.
- 5.2.4 Approval of Site Assessment Plan: If DTSC finds the Site Assessment Plan is adequate and contains all necessary information required pursuant to HSC §25395.94(b) and (c), DTSC will approve the plan and notify appropriate persons, including any public drinking water system that relies on the Site’s groundwater for public drinking water purposes.

- 5.3 Response Plan: If DTSC determines that a response action is necessary to prevent or eliminate an unreasonable risk, La Vista, LLC will submit a Response Plan to DTSC for approval. Once the Response Plan is approved, La Vista, LLC will implement the Response Plan. The Response Plan must contain the information specified in HSC §25395.96(a) and (b) and shall provide that implementation of the Response Plan will place the Site in the condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment. Upon approval of the Response Plan, DTSC will notify all appropriate persons including the City of Hayward.
- 5.3.1 Response Plan Public Participation: The Response Plan shall provide for public participation that meets the requirements of HSC §25395.96, including a DTSC public meeting if requested.
- 5.3.2 Response Plan Components: The Response Plan shall include all of the following: identification of the releases or threatened releases that the Response Plan addresses; documentation that the plan is based on adequate site characterization; identification of Response Plan objectives; identification of the proposed remedy; identification of the reasonably anticipated future land uses of the Site, current and projected land use and zoning designations; confirmation by the City of Hayward that the identified anticipated future land uses and current and projected land uses and zoning designations are accurate; description of activities that will be implemented to control any endangerment that may occur during the response action; description of any land use controls that are part of the response action; description of wastes and how they will be managed in conjunction with the response action; and provisions for removal of containment or storage vessels and other sources of contamination, including soils and free product, that cause an unreasonable risk.
- 5.3.3 Schedule for Completion of Response Plan: The Response Plan shall include a timetable that identifies a schedule for compliance with the response action activities required for the Site.
- 5.3.4 Determination of Appropriate Care: After DTSC receives the Response Plan submitted under Section 5.3, DTSC will make a written determination as to whether proper completion of the Response Plan will constitute appropriate care for the purposes of HSC §25395.67(a).
- 5.3.5 Certificate of Completion: Upon completing the response action, La Vista, LLC shall submit a response action completion report documenting its implementation of the Response Plan. If DTSC determines this report is adequate, DTSC will approve it, according to the schedule in Exhibit B. DTSC will issue a certificate of completion if it determines that (i) all response actions other than the long-term O&M requirements and groundwater monitoring have been satisfactorily completed in accordance with the approved Response Plan and (ii) if the Response Plan includes long-term obligations that have not been completed, including Operation

and Maintenance (O&M) requirements or monitoring, La Vista, LLC has submitted an adequate long-term O&M plan (O&M Plan), and La Vista, LLC has demonstrated initial compliance with the O&M Plan.

- 5.3.6 Notification of Change in End Use: La Vista, LLC intends to use the Property for residential purposes. After the Response Plan is approved, La Vista, LLC will notify DTSC of any proposed change in the use or anticipated use of the Site. If the proposed change in use or anticipated use of the Site requires a higher level of protection than the use or anticipated use identified in the Response Plan, DTSC may require La Vista, LLC to prepare and implement a new Response Plan that takes into account the change in use or anticipated use of the Site. La Vista, LLC may not make any change in use of the Site inconsistent with any recorded land use control without the express approval of DTSC made in accordance with HSC §25395.99(f).
- 5.3.7 Agreement to Take All Required Actions: Pursuant to HSC §25395.92(d)(1), La Vista, LLC agrees to take all actions required for a response action pursuant to HSC, Division 20, Chapter 6.8 and Water Code Division 7. Required actions may include actions necessary to prevent an unreasonable risk before approval of the Response Plan.
- 5.4 Operation and Maintenance: If DTSC determines long-term O&M is required, DTSC may, as a condition of issuing a certificate of completion, enter into an O&M agreement with La Vista, LLC that governs long-term O&M activities and that provides for adequate financial assurance. La Vista, LLC shall select financial assurance provisions from the options available in title 22, California Code of Regulations, §66264.145.
- 5.5. CEQA Compliance: La Vista, LLC shall submit to DTSC all documentation necessary for compliance with the California Environmental Quality Act, Public Resources Code §§21000-21177 (CEQA).
- 5.6 Continuing Compliance with Qualifying Conditions: In order to continue to qualify as a Bona Fide Purchaser, in addition to the conditions of HSC §25395.80 that apply on the effective date of this Agreement, La Vista, LLC will comply with all conditions of HSC §25395.80 as they become applicable and as they continue to apply. These conditions include (i) exercising appropriate care with respect to releases and threatened releases of hazardous materials at the Site, (ii) providing full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration at the Site, (iii) complying with land use controls established or relied on in connection with an approved response action at the Site, (iv) not impeding the effectiveness or integrity of any aspect of any remedy employed at the Site in connection with a response action, (v) complying with all requests for information or administrative subpoenas concerning releases or threatened releases of hazardous materials by any agency with jurisdiction under an applicable statute, and (vi) providing applicable notices and satisfying reporting requirements required by state or

federal law with respect to the discovery or release of hazardous materials at the Site.

- 5.7 Submittal of Final Reports: For all final reports, La Vista, LLC shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat version 7.0 or lower or Microsoft Word 2003 formatted file (doc) or lower.

6. Oversight Management and Payment

- 6.1 Oversight Agreement Managers and Project Managers: Barbara J. Cook, P. E. is designated by DTSC as its manager for this Agreement. James B. Summers is designated by La Vista, LLC as its manager for this Agreement. Each Party will provide at least ten (10) calendar days advance written notice to the other Party of a change of its designated agreement manager. All notices, documents and communications unless otherwise specified will be sent to the following addresses:

To: Barbara J. Cook, P.E., Branch Chief
DTSC
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Facsimile: (510) 540-3819

To: James B. Summers
La Vista, LLC
11555 Dublin Boulevard
Dublin, CA 94568
Facsimile: (925) 803-4327

- 6.2 Payment of DTSC's Costs: La Vista, LLC shall follow the procedures for payment of DTSC's oversight costs.
- 6.2.1 Cost Reimbursement: La Vista, LLC shall reimburse DTSC for all DTSC costs incurred pursuant to this Agreement for reviewing or overseeing implementation of a Site Assessment Plan, Response Plan or O&M Plan. La Vista, LLC will reimburse DTSC costs in accordance with HSC Division 20, Chapter 6.66. DTSC's costs are recoverable pursuant to HSC §25360.
- 6.2.2 Cost Estimates: An estimate of DTSC oversight costs is contained in Exhibit C. The cost estimate is the estimated cost of DTSC oversight of the activities discussed in Section 5, above. The Parties acknowledge that the cost estimate is not the final cost figure. DTSC will provide an updated cost estimate if the estimated oversight costs increase or the scope of work changes. If the Parties revise the cost estimate in Exhibit C, such revision will be incorporated into this Agreement as an amendment to Exhibit C.

6.2.3 **Payment Procedures:** In anticipation of the costs to be incurred under this Agreement, including costs of preparing this Agreement, La Vista, LLC agrees to make an advance payment of \$20,000 to DTSC no later than thirty (30) calendar days after the effective date of this Agreement. If the advance payment does not cover all costs payable to DTSC, DTSC will invoice La Vista, LLC quarterly. La Vista, LLC shall pay all invoices within sixty (60) calendar days of the date of the invoice. If La Vista, LLC disputes any portion of the bill, it will follow the procedures in section 6.2.5 of this Agreement. If DTSC does not receive payment within sixty (60) calendar days after of the date of the invoice, La Vista, LLC may be deemed to be in material default of this Agreement. Any payment not received by DTSC within sixty (60) calendar days is subject to interest based on applicable Federal and State laws and regulations, including but not limited to Health and Safety Code §25360.1.

6.2.4 **Billing Address:** DTSC will bill La Vista, LLC at least quarterly. La Vista, LLC billing address is:

La Vista, LLC
Attn: James B. Summers
11555 Dublin Boulevard
Dublin, CA 94568

6.2.5 **Payment Address:** All payments made by La Vista, LLC pursuant to this Agreement shall be by check made payable to DTSC, and bearing on its face the project code for the Site (201610-11) and the docket number of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

6.2.6 **Billing Disputes:** If La Vista, LLC disputes DTSC's billing, or any part thereof, La Vista, LLC shall file a request for dispute resolution in writing within forty-five (45) calendar days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, La Vista, LLC shall pay all costs that are undisputed in accordance with this section. The filing of a notice of dispute pursuant to this section will not stay the accrual of interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Special Assistant for Cost Recovery and
Reimbursement Policy
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC to receive submittals under this Agreement. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

- 6.2.7 Effect of Billing Dispute: The existence of a billing dispute does not excuse, stay, or suspend any other compliance obligation or deadline required pursuant to this Agreement.

7. Additional Provisions

- 7.1 Exhibits: Standard provisions of this Agreement are contained in Exhibit D attached hereto. All Exhibits are incorporated into this Agreement by reference.
- 7.2 Amendment: This Agreement may be amended in writing by mutual agreement of DTSC and La Vista, LLC. The amendment shall be signed first by La Vista, LLC and shall be effective upon the date the amendment is signed by DTSC. Once signed by DTSC, the amendment will be incorporated in this Agreement.
- 7.3 Effective Date: The effective date of this Agreement is the date when this Agreement is fully executed.
- 7.4 Representative Authority: Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.
- 7.5 Future Owners: Once a No Further Action determination or Certificate of Completion is issued pursuant to Section 5.3.5 of this Agreement, a Person who acquires the Site or a portion of the Site from a bona fide purchaser may qualify as a bona fide purchaser by demonstrating to DTSC that the person meets all of the qualifying conditions of HSC §§ 25395.69 and 25395.80. Pursuant to HSC §§ 25395.81(c) and 25395.92, immunities attach when the bona fide purchaser enters into an agreement with DTSC.
- 7.6 Counterparts: The Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

DTSC



Date: 12-21-05

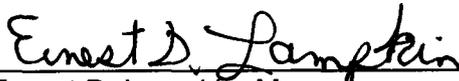
Barbara J. Cook, P.E., Chief
Northern California - Coastal Cleanup Operations Branch
Site Mitigation Program

LA VISTA LLC, a California limited liability company

By: 

Date: 12-21-05

James B. Summers, Manager

By: 
Ernest D. Lampkin, Manager

Date: 12/21/05

LIST OF EXHIBITS

Exhibit A: Site Map

Exhibit B: Schedule

Exhibit C: DTSC Oversight Costs Estimate

Exhibit D: Standard Provisions

EXHIBIT A
 SITE MAP

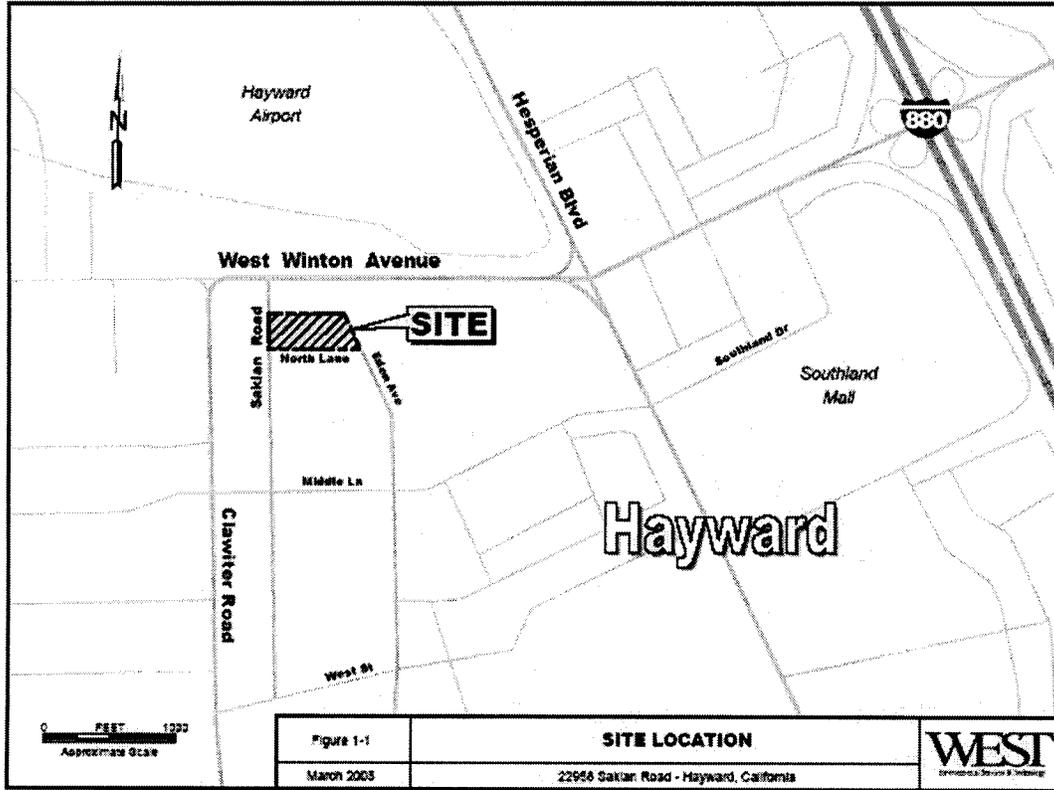


EXHIBIT B

SCHEDULE

If either La Vista, LLC or DTSC is unable to perform any activity or submit any document within the schedule outlined below, that Party shall notify the other Party's Agreement Manager prior to the date the task was to be completed in the schedule below. If either Party determines that the revised schedule will have a significant effect on the response action, the Parties will re-negotiate the schedule and amend it pursuant to Section 7.2 of the Agreement. The Parties recognize that La Vista, LLC intends to commence construction on the Site in September, 2006 and agree to use best efforts in order for the cleanup to be completed by August 2006.

Activity	Schedule
Submit existing data	La Vista to Submit concurrent with AB 389 application
Submit Site Assessment Workplan	La Vista submitted prior to execution of AB 389 Agreement
DTSC to provide comments on Workplan	By December 29, 2005.
Submit revised Site Assessment Workplan	By January 13, 2006
DTSC Approval of Workplan and determination whether HRA is required	Within 14 days of submittal of an acceptable Workplan adequately addressing DTSC's comments (~January 27, 2006).
Implement Site Assessment Workplan	Upon DTSC's approval of Workplan
Submit Response Plan, including Report of Findings and Health Risk Assessment, if required.	By March 27, 2006.
Submit CEQA documentation	Submit concurrently with Response Plan.
Submit Public Notice	Within 7 days of submittal of the Response Plan
DTSC review and approval of Response Plan	DTSC to review and comment concurrent with public review period. DTSC to approve Response Plan, if appropriate, after addressing public comments (~May 31, 2006).
Submit Operation, Maintenance and Monitoring Plan (O&M Plan)	Within 14 days of DTSC approval of Response Plan (~June 14, 2006).
DTSC to provide draft land use restriction	Within 14 days of DTSC's receipt of the O&M Plan (~June 28, 2006).
Implement Response Plan and submit Completion Report	Within 45 days from the date of DTSC's approval of Response Plan (~July 17, 2006)

DTSC to provide comments on the Completion Report.	Within 7 days of submittal of the Completion Report (~July 24, 2006)
DTSC's issuance of a Certificate of Completion or No Further Action	Within 7 days of receipt of a Completion Report adequately documenting implementation of the Response Plan, an acceptable O&M Plan and Agreement, if required, and the executed land use restriction, if required. (~August 1, 2006)

EXHIBIT C

DTSC OVERSIGHT COST ESTIMATE

Title	Project Manager	Branch Chief	Toxicology	Public Particip	HQ CEQA	Legal
Classification	Sr HSS	HSSII	Staff Toxicologist	PPS	AEP	Staff Counsel
TASK:						
Agreement Prep./Negotiation	35					28
Review Existing Data and Site Assessment Work Plan	20					
Site Visit	6					
Report of Findings	16					
Review Response Plan (Sec. 5.3)	40	2	24		20	
Public Participation (Sec. 5.3.1)	20			30		
Oversight of Response Plan Activities	16					
Review Implementation Report (Sec. 5.3.4)	16	1				
Issue Certificate of Completion (Sec.5.3.5)	8	1				2
Total No. Hours/Class	177	4	24	30	20	30
Hourly Rate/Class	134	168	166	109	138	186
Cost/Class	23718	672	3984	3270	2760	5580
Grand Total Cost	39984					

Exhibit D
STANDARD PROVISIONS

- 1.0 Incorporation by Reference: The Standard Provisions in this Exhibit D are incorporated by reference into and are a part of the Agreement.
- 2.0 Dispute Resolution Procedure: The Parties agree to use their best efforts to resolve all disputes informally. The Parties agree that the procedures contained in this Section are the required administrative procedures for resolving disputes arising under the Agreement. If La Vista, LLC fails to follow the procedures contained in this Section, it shall have waived its right to further contest the disputed issue. Disputes regarding DTSC billings shall follow the procedures set forth in Section 6.2 of the Agreement.
 - 2.1 La Vista, LLC shall first seek resolution with DTSC's assigned Project Manager and supervisor. If the issue is not resolved after review by the supervisor, La Vista, LLC shall seek resolution with the Branch Chief by presenting in a letter the issues in dispute, the legal or other basis for La Vista, LLC's position, and the remedy sought.
 - 2.2 If La Vista, LLC disagrees with the Branch Chief's decision, then La Vista, LLC may appeal to the Cleanup Operations Division Chief. The Division Chief or designee shall review La Vista, LLC's request for dispute resolution and any supporting documents. The decision of the Division Chief, or designee shall constitute DTSC's administrative decision on the issues in dispute.
- 3.0 Endangerment and Additional Response Action Provisions.
 - 3.1 La Vista, LLC shall notify DTSC's Agreement Manager immediately upon learning of any previously unknown condition that endangers public health or safety or that poses an unreasonable risk to human health and safety or the environment.
 - 3.2 In the event DTSC determines that any activity (whether or not pursued in compliance with the Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, DTSC may order La Vista, LLC to stop further implementation of the Agreement for such period of time as may be needed to abate the endangerment.
 - 3.3 The DTSC may require La Vista, LLC to conduct additional response actions under the following conditions:
 - 3.3.1 If a new release is discovered that is caused or contributed to by La Vista, LLC, and if DTSC determines response action is necessary to protect public health and safety or the environment;
 - 3.3.2 If a hazardous material is discovered during a response action or subsequent development and DTSC determines the hazardous material poses unreasonable risk to human health and safety or the environment;

- 3.3.3 A release of hazardous materials that poses an unreasonable risk is discovered on the site before DTSC makes a finding that no further action is required or issues a certificate of completion, LaVista, LLC will appropriately resolve the release to the written satisfaction of DTSC.
- 3.3.4 A release of hazardous materials that poses an unreasonable risk is discovered on the site after DTSC makes a finding that no further action is required or issues a certificate of completion, and La Vista, LLC did not cause or contribute to the release, La Vista, LLC will appropriately resolve the release to the written satisfaction of DTSC.
- 4.0 Disclosure Provisions. La Vista, LLC will comply with applicable reporting, disclosure and notification requirements under all applicable statutes.
- 5.0 Withdrawal and Termination Provisions.
- 5.1 The DTSC may withdraw from the Agreement by providing 30-calendar day written notice to La Vista, LLC for material deviation from the Agreement or for fraud, intentional nondisclosure or misrepresentation to DTSC.
- 5.2 La Vista, LLC may withdraw from the Agreement by providing 30-calendar day written notice to DTSC, if La Vista, LLC has reimbursed DTSC for all costs incurred pursuant to the Agreement and if La Vista, LLC has demonstrated to the written satisfaction of DTSC that conditions at the site do not pose an endangerment to public health and safety or the environment. If DTSC determines conditions at the site pose an endangerment to public health, safety or the environment, DTSC may take appropriate response actions or require La Vista, LLC to take appropriate response actions at the site solely to address the conditions that pose an endangerment.
- 5.3 Either La Vista, LLC or DTSC may terminate the Agreement as provided in these Standard Provisions before DTSC makes a finding of no further action or issues a certificate of completion. La Vista, LLC or DTSC will provide 30-calendar day advance written notice of such termination to the other Party.
- 5.4 If La Vista, LLC or DTSC withdraws from or terminates the Agreement, the immunities provided to La Vista, LLC by entering into the Agreement are no longer in effect.
- 6.0 Land Use Changes and Controls.
- 6.1 If use of the Site changes after the Response Plan is approved to a use that requires a higher level of protection, DTSC may require La Vista, LLC to prepare and implement a new Response Plan.
- 6.2 La Vista, LLC may not change the use of a site in a way that is inconsistent with any recorded land use control unless the change is approved by DTSC in accordance with the variance and removal procedures specified in HSC §.25395.99(f).
- 6.3 La Vista, LLC will execute and record any land use controls required under an approved Response Plan in accordance with the provisions of HSC §25395.99.

- 7.0 Exclusions from Hazardous Waste Facility Permit Requirements.
DTSC may exclude any portion of a response action conducted entirely on a site subject to an approved Response Plan from the hazardous waste facilities permit requirements if the Response Plan specifies that the response action will be conducted in compliance with the standards, requirements, criteria or limitations specified in HSC §25395.100(b), including any condition imposed by DTSC.
- 8.0 Liens. Pursuant to HSC §25395.83, DTSC shall have a lien on the Site for unrecovered costs incurred by DTSC for which La Vista, LLC is not liable as a Bona Fide Purchaser; or by agreement, DTSC and La Vista, LLC may agree to substitute a lien on another property or other assurance of payment for the unrecovered response costs provided all of the following requirements are met:
- 8.1 A response action for which DTSC has unrecovered costs was carried out at the Site.
- 8.2 The response action increased the fair market value of the Site above the fair market value that existed before the response action was initiated.
- 8.3 The lien amount may not exceed the increase in fair market value of the Site attributable to the response action at the time of a sale or other disposition of the Site, and may not exceed the unrecovered response costs actually incurred by DTSC.
- 8.4 The lien shall continue until the earlier of satisfaction of the lien through sale or other means, or recovery of all response costs incurred by DTSC at the Site. Once the lien is satisfied, DTSC agrees to record a satisfaction of lien acknowledgement in the Alameda County Records Office within a reasonable period of time.
- 9.0 Petroleum Releases. If a release of petroleum related contamination from an underground storage tank is discovered on or under the site after the effective date of the Agreement, La Vista, LLC shall conduct a response action using funds in the Underground Storage Tank Cleanup Fund created under HSC §25299.50 to the extent permissible by law, in accordance with HSC §25299.51.
- 10.0 Access. La Vista, LLC shall provide access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended to nor shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law.
- 11.0 Notification of Field Activities. La Vista, LLC shall inform DTSC at least seven (7) calendar days in advance of all field activities pursuant to the Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected pursuant to the Agreement.

- 12.0 Proponent Liabilities. Except as specified in Section 4 of the Agreement, nothing in the Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a result of La Vista, LLC's past, current, or future operations. Nothing in the Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site.
- 13.0 Government Liabilities. The State of California (State) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by La Vista, LLC or by related parties in carrying out activities pursuant to the Agreement, nor shall the State of California be held as a party to any contract entered into by La Vista, LLC or its agents in carrying out the activities pursuant to the Agreement.
- 14.0 Third Party Actions. In the event that the La Vista, LLC is a party to any suit or claim for damages or contribution to which DTSC is not a party, relating to the Site, La Vista, LLC will notify DTSC in writing within ten (10) calendar days after service of the complaint in the third-party action. However, failure to give such notice within 10 calendar days will not be a material breach of the Agreement, and this requirement confers no rights on any third parties not party to the Agreement.
- 15.0 California Law. The Agreement shall be governed, performed and interpreted under the laws of the State of California.
- 16.0 Severability. If any portion of the Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.
- 17.0 Parties Bound. The Agreement applies to and is binding, jointly and severally, upon La Vista, LLC and its business entity successors and assigns and upon any successor agency of DTSC that may have responsibility for and jurisdiction over the subject matter of the Agreement. DTSC may withdraw from or terminate the Agreement under Section 5.0 if there is a change in the ownership or corporate or business status of La Vista, LLC or of the Site unless the resulting business entity demonstrates to DTSC that it meets all of the qualifying conditions of HSC sections HSC §§ 25395.69 and 25395.80 and follows the requirements in Section 7.5 of this Agreement.

TABLE OF CONTENTS

Recitals	1
1. Introduction	1
1.1 Purpose	1
1.2 Parties.....	1
1.3 Jurisdiction.....	1
1.4 Agreement Not an Admission.....	2
1.5 Agreement Not a Limitation.....	2
2. Definitions	2
2.1 Citation to Health & Safety Code	2
2.2 Applicable Statute	2
3. Findings.....	2
3.1 Site Description.....	2
3.2 Site History	2
3.3 Eligibility of Site.....	3
3.4 La Vista, LLC as a Bona Fide Purchaser	3
4. Immunities.....	3
4.1 Attachment of Immunities	3
4.2 Immunities in Effect.....	3
4.3 Chapter 6.82 Repeal.....	4
4.4 Effect of Fraud	4
5. Activities	4
5.0 Activities to be Conducted	4
5.1 Submittal of Data	4
5.2 Site Assessment	4
5.2.1 Site Assessment Work Plan.....	5
5.2.2 Analysis of Report of Findings	5
5.2.3 Land Use Controls	5
5.2.4 Approval of Site Assessment Plan.....	5
5.3 Response Plan	6
5.3.1 Response Plan Public Participation	6
5.3.2 Response Plan Components	6
5.3.3 Schedule for Completion of Response Plan	6
5.3.4 Determination of Appropriate Care	6
5.3.5 Certificate of Completion.....	6
5.3.6 Notification of Change in End Use	7
5.3.7 Agreement to Take All Required Actions	7
5.4 Operation and Maintenance.....	7
5.5 CEQA Compliance.....	7
5.6 Continuing Compliance with Qualifying Conditions.....	7
5.7 Submittal of Final Reports:.....	8
6. Oversight Management and Payment.....	8
6.1 Oversight Agreement Managers and Project Managers.....	8
6.2 Payment of DTSC's Costs	8

6.2.1	Cost Reimbursement	8
6.2.2	Cost Estimates	8
6.2.3	Payment Procedures	9
6.2.4	Billing Address	9
6.2.5	Payment Address	9
6.2.6	Billing Disputes	9
6.2.7	Effect of Billing Dispute	10
7.	Additional Provisions	10
7.1	Exhibits	10
7.2	Amendment	10
7.3	Effective Date	10
7.4	Representative Authority	10
7.5	Future Owners	10
7.6	Counterparts	10

Exhibit A: Site Map

Exhibit B: Schedule

Exhibit C: DTSC Oversight Costs Estimate

Exhibit D: Standard Provisions

1.0	Incorporation by Reference	17
2.0	Dispute Resolution Procedure	17
3.0	Endangerment and Additional Response Action Provisions	17
4.0	Disclosure Provisions	18
5.0	Withdrawal and Termination Provisions	18
6.0	Land Use Changes and Controls	18
7.0	Exclusions from Hazardous Waste Facility Permit Requirements	19
8.0	Liens	19
9.0	Petroleum Releases	19
10.0	Access	19
11.0	Notification of Field Activities	19
12.0	Proponent Liabilities	20
13.0	Government Liabilities	20
14.0	Third Party Actions	20
15.0	California Law	20
16.0	Severability	20
17.0	Parties Bound	20