

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CITY OF DALLAS, TEXAS

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

Case No. 23-1219 C

COMPLAINT

Plaintiff, the City of Dallas, Texas (“Dallas” or “the City”), files this Complaint against Defendant, the United States of America (the “United States”), and alleges as follows:

NATURE OF THE ACTION

1. Dallas brings this action for damages and other relief arising from the United States’ (1) breach of contractual obligations to clean up its environmental contamination of the former Naval Air Station, Dallas (“NASD”) located at the Hensley Field site and (2) taking of property owned by Dallas without just compensation as required by the United States Constitution.

2. The Hensley Field site consists of 738 acres bordering Mountain Creek Lake and features skyline views of Downtown Dallas, located less than ten miles away. The United States has failed to keep multiple binding promises to remediate the significant environmental contamination caused by its decades-long use of the Hensley Field site. As a result, Dallas cannot implement its Master Plan that contemplates the reuse and redevelopment of the Hensley Field site into a vibrant mixed-use community for more than 12,000 residents and 12,000 jobs.

3. Starting in 1929, Dallas leased and otherwise conveyed land to the United States to use as a military airfield and conduct ancillary activities. Dallas received nominal compensation—

amounting to three dollars—from the United States for the transfers. In exchange, the United States agreed to return the property to Dallas in good condition and free of any encumbrances if it stopped using the land. By the time NASD was designated for closure in 1993, the United States had severely contaminated the property with a broad array of hazardous substances, including but not limited to chlorinated solvents and per- and polyfluoroalkyl substances. Certain of those hazardous substances remain on the property in meaningful levels, exceeding relevant environmental cleanup thresholds imposed by law.

4. In 2001, Dallas filed a lawsuit in the Court of Federal Claims (the “2001 CFC Lawsuit”) against the United States seeking money damages for insufficiently remediated contamination at the Hensley Field site. The 2001 complaint alleged breach of contract and takings claims against the United States and sought monetary relief. The parties settled the litigation in 2002 (the “Settlement Agreement”). Under the terms of the resulting Settlement Agreement, the United States was required to complete necessary environmental cleanup tasks, including sufficiently remediating the Hensley Field site to achieve Texas Risk Reduction Program (“TRRP”), 30 Texas Admin. Code Ch. 350, Remedy Standard A, concentration levels for contaminants in both groundwater¹ and soils by late 2017. The United States has failed to satisfy this core contractual promise to Dallas.

5. The United States has breached the express terms of the Settlement Agreement by not completing its environmental cleanup obligations within the designated time. The United States also has breached its implied duty of good faith and fair dealing under the Settlement Agreement by failing to pursue the remediation of the Hensley Field site with reasonable diligence.

¹ In this Complaint, “groundwater” refers to shallow pools of water below the surface but excludes drinking water or aquifers.

6. Dallas has consistently attempted to facilitate the timely remediation of the Hensley Field site in collaboration with the United States. Despite the City's efforts, the United States has failed to meet its obligations, preventing Dallas from implementing its Master Plan to reuse and redevelop the site. Dallas prepared the Master Plan at the request of the United States. The Master Plan contemplates redevelopment of the Hensley Field site into a vibrant community with 6,800 mixed-income residential units to accommodate more than 12,000 residents, 3.7 million square feet of commercial and institutional uses, and 185 acres of public open spaces. Additionally, the Master Plan demonstrates how the reuse and redevelopment of the Hensley Field site will promote economic recovery, social equity, and environmental justice in the southwestern part of the City that has not enjoyed the same level of growth and prosperity as other parts of Dallas. Dallas' redevelopment plan is stymied by the United States' failure to fulfill its obligations under the Settlement Agreement to clean up its chemical contamination to an acceptable level as defined by the Settlement Agreement.

7. The extensive remaining contamination at the Hensley Field site also precludes Dallas from using, leasing, or selling the majority of the property for any commercially feasible purpose without expending substantial resources that greatly exceed the current commercial value of the property. Thus, the United States has deprived Dallas of the economically viable or beneficial use of Hensley Field by causing significant environmental contamination and failing to remediate it pursuant to the Settlement Agreement, resulting in a taking of Dallas' property without just compensation in violation of the Takings Clause. The United States' breach of the Settlement Agreement also has resulted in the indefinite physical occupation of the property by the remaining contaminants, also causing a taking of Dallas' property without just compensation in violation of the Takings Clause.

8. In this action, Dallas seeks to recover the damages it has suffered and continues to suffer as a result of the breach of the Settlement Agreement by the United States and to receive just compensation for the taking of the City's property.

PARTIES

9. Plaintiff is the City of Dallas, Texas, a home-rule municipality organized under the laws of the State of Texas.

10. Defendant is the United States of America. At certain times pertinent to this lawsuit, the United States acted through its agencies, the Department of the Navy (the "Navy") and the Department of Defense ("DOD").

JURISDICTION AND VENUE

11. This Court has jurisdiction under the Tucker Act, 28 U.S.C. § 1491, because this suit asserts claims "against the United States founded either upon the Constitution . . . or upon any expressed or implied contract with the United States" Venue is also proper under 28 U.S.C. § 1491.

FACTUAL BACKGROUND

A. The History of the Hensley Field Site and Naval Air Station, Dallas

12. In 1928, Dallas purchased certain land and constructed runways for the express purpose of facilitating the United States' transfer of certain Army Air Corps operations from an airfield just north of Dallas Love Field Airport to account for increasing commercial traffic at the Love Field Airport. In 1929, Dallas leased the land and runways, consisting of approximately 340 acres, to the United States for a total rent of one dollar, which the United States paid in 1929. The new airfield was named Hensley Field. The Hensley Field base was subsequently expanded to

encompass additional acreage purchased by Dallas, used for a variety of purposes, and subject to a number of contractual arrangements.

13. In the years prior to 1937, Mountain Creek Lake was formed adjacent to the Hensley Field site as a cooling reservoir for the local utility company. The 2,500-acre lake borders the Hensley Field site to the east and south, and also provides recreational boating and fishing opportunities.

14. In December 1940, the City deeded to the United States an approximately thirty-acre parcel adjacent to Hensley Field for the Navy to use as a training base (the “Reverter Property”). The United States paid one dollar for this new parcel, and the deed was subject to the “express condition and limitation” that if the United States ever stopped using the property, it would return title to the City “free and clear of any encumbrance whatsoever.”² The new parcel was commissioned as the Naval Air Reserve Base, Dallas in 1941, and its name was changed to Naval Air Station, Dallas (“NASD”) in 1943. NASD subsequently became the official designation of the entire base at the Hensley Field site.

15. Also in 1940, the United States constructed a facility for manufacturing military aircraft on a 250-acre site adjacent to the northwest corner of Hensley Field. Manufacturing operations by private contractors began in 1941 and continued through the World War II years until the contracts were terminated in 1945. In 1947, the property was transferred to the Navy and became the Naval Weapons Industrial Reserve Plant (“NWIRP”). Until its closure in 2014, NWIRP operated continuously in conjunction with NASD as a Government-Owned Contractor

² Settlement Agreement ¶ 2(a).

Operated facility, manufacturing commercial and military airplane components and weapons systems.

16. In 1943, the United States acquired by condemnation approximately 75 acres adjacent to the east border of the Hensley Field site, which became the main entrance and site of NASD base headquarters (the “Federal Property”).

17. In 1949, the United States decided to place all of Hensley Field under the auspices of the Navy. Consequently, at the request of the United States, the City entered into a new lease with the United States (the “NASD Lease”), effective July 1, 1949, covering a total of approximately 722 acres (the “Leased Property”). Under the terms of the NASD Lease, the United States agreed to maintain the leased premises in “good repair and tenantable condition” throughout the life of the lease. Again, the total rent for the duration of the lease, including all extensions, was one dollar, which the United States paid in 1949. The NASD Lease was subsequently modified ten times. These amendments did not change the obligation under the NASD Lease for the United States to maintain the leased premises in “good repair and tenantable condition” for the entire lease period.

18. In 1955, the Navy extended its primary runway another 500 feet into Mountain Creek Lake by filling in that portion of the lake, and then purchasing the newly created land, consisting of approximately fourteen acres, from the utility company that used the lake as a cooling reservoir (the “Runway Extension”).

19. Although for title purposes the NASD base may be divided into the Leased Property, Reverter Property, Federal Property, and Runway Extension, the Navy made no such distinctions for operational purposes during its tenure on the base. Rather, the Navy developed and operated the property as a unified base.

20. Over the years, the Navy operated NASD as an air base, using it for pilot training, maintenance and repair operations, and firefighter training. The Navy constructed numerous improvements to support these operations, including several sizeable airplane hangars, a control tower, runways and taxiways, equipment maintenance and repair buildings, outdoor engine stands for “runups” (engine testing), a fuel farm for aircraft, a diesel/gasoline filling station, storage buildings and warehouses, above- and underground storage tank systems for fuels and other hazardous materials, a septic system, a sanitary sewer system, a waste treatment plant, oil/water separators, various drainage improvements, a water supply system, a private road system, offices, barracks, and officers’ residences.

21. The Navy employed a wide range of hazardous materials in the NASD’s operations, including ordnance chemicals, firefighting chemicals used in firefighting training exercises and in fire suppression systems installed in several hangars, pesticides, rodenticides, herbicides, chemicals for paint stripping—as well as chemicals associated with the Navy’s finishing and waste disposal operations, battery neutralization, used battery storage, buried debris and rubble, and automobile hydraulic lifts.

22. NASD’s extensive use of fire-fighting chemicals—including aqueous film-forming foams (“AFFF”)—is particularly significant. AFFFs use substances known as per- and polyflouroalkyl substances (“PFAS”). PFAS are a group of synthetic chemical compounds with chains of linked carbon and fluorine atoms that make PFAS resistant to degrading.³ This resistance promotes the use of PFAS in firefighting foams to create more effective foams and

³ National Institute of Environmental Health Sciences, Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) (2023), <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm> (last accessed July 18, 2023).

suppress fires.⁴ The same resistance also allows PFAS to accumulate in the environment.⁵ As a result, people may be repeatedly exposed to PFAS—leading to a build-up of PFAS in the body that is associated with multiple negative health effects.⁶

23. The United States provided specifications that effectively required PFAS to be used in AFFF firefighting products on military bases.⁷ Accordingly, the Navy used PFAS-containing AFFF firefighting products extensively on the Hensley Field site, including in AFFF fire suppression systems that were “installed within several hangars in the northeast section of the site and operated until site closure.”⁸ On numerous occasions, valves in the AFFF fire suppression systems would malfunction—resulting in substantial discharges of AFFF in hangars that would subsequently leach into the surrounding soil. Additionally, AFFF was loaded onto fire trucks and applied throughout the property, including on runways and a firefighting training area located on the southwest corner of the property.

24. During the Navy’s use of the Hensley Field site, environmental problems compounded. For example, in 1983, the Navy conducted an Engineering Evaluation, which

⁴ *Id.*

⁵ *Id.*

⁶ *See id.* (noting that “health effects include altered metabolism, fertility, reduced fetal growth and increased risk of being overweight or obese, increased risk of some cancers, and reduced ability of the immune system to fight infections”).

⁷ *See* Benjamin J. Place, et. al, *Identification of Novel Fluorochemicals in Aqueous Film-Forming Foams (AFFF) Used by the US Military*, 46 *Environmental Science & Technology* 7,120, 7,121 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3390017/pdf/nihms-385147.pdf> (noting that “AFFF sold to the US military must conform to military-specific performance and quality control requirements as prescribed by the military specification (Mil-Spec) MIL-F-24385, which specifies characteristics such as . . . total fluorine content”).

⁸ Per- and Polyfluoroalkyl Substances (PFAS) Sampling at Former Naval Air Station (NAS) Dallas, Dallas, Texas, at 1 (Jan. 29, 2019).

concluded that only sixteen percent of the base facilities were “adequate”; the other eighty-four percent of the facilities were either “substandard” or “inadequate.” The Engineering Evaluation also noted hazardous waste concerns on the base, including the firefighter training area, which required the installation of a concrete barrier to prevent chemicals from polluting Mountain Creek Lake and to meet air quality standards. Further, in 1984, the Navy decided to stop using on-site wells at NASD for potable water and directed that all such wells should be plugged and sealed “to avoid further groundwater contamination.” Yet, the Navy subsequently informed Dallas it did not know where at least three wells were located, which means that there is no ready way to determine whether they were closed properly.

25. The Navy’s handling of hazardous substances caused further damage to the Hensley Field site. For instance, in 1989, as a result of the Navy’s removal of four underground storage tanks on the Leased Property, Dallas was forced to record a deed restriction indicating the existence of solvent-contaminated soil on four sites at NASD. Recording the deed restriction was required by the rules of the Texas Water Commission and was made necessary by contamination resulting from the Navy’s failure to properly maintain the tanks in a safe condition.

B. The Closure of Naval Air Station, Dallas at the Hensley Field Site

26. With the end of the Cold War, the United States began to reduce the number of military bases across the country. In 1990, Congress passed and the President signed the Base Realignment and Closure Act (“BRAC”), which established the Base Realignment and Closure Commission (“BRACC”).

27. In 1993, BRACC announced that NASD was one of the military bases slated for closure. This announcement, coupled with the President’s approval of the BRACC recommendation, triggered the Navy’s obligation to complete the closure process within six years.

“In carrying out any closure or realignment,” the Navy was required to “ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.”⁹

28. Also during 1993, the United States began operating portions of NASD as a hazardous waste storage facility under a permit issued by the Environmental Protection Agency (“EPA”) and the Texas Natural Resource Conservation Commission (“TNRCC”) pursuant to their authority under the Resource Conservation and Recovery Act (“RCRA”).

29. During the BRAC closure process, the extent of the environmental contamination at Hensley Field began to become apparent. For example, an Environmental Baseline Survey performed at NASD and published in May 1994 reported that an estimated seventy tons of hazardous waste were generated every year at NASD, ninety-five transformers suspected of containing polychlorinated biphenyls were located at NASD, and there were five septic tank systems with corresponding leach fields on the base, all of which had received waste discharges from industrial processes during base operations and could still contain sediments. As another example, RCRA Facility Investigation Reports noted a number of hazardous substances found in both the soil and groundwater exceeding concentrations considered to be protective of health and the environment. Furthermore, meetings of the NASD BRAC Cleanup Team (“BCT”)—which consisted of representatives of the Navy, the EPA, and TNRCC—revealed that: in 1972-73, the Navy spilled 20,000 gallons of jet fuel, which traveled down the trench and into a creek on the Hensley Field site; during the 1980s, there were other spills from the Navy’s fuel farm into the

⁹ Defense Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, § 2905(a)(2) (1990).

drainage ditch that ran off base; and contamination caused by the Navy's contractor at the adjacent NWIRP site had created a "trichloroethylene plume" extending onto NASD at the north end of the runway.

30. Hazardous substances identified at NASD include, without limitation: volatile organic chemicals ("VOCs"), including chlorinated solvents; perfluoroalkyl and polyfluoroalkyl substances ("PFAS"); polychlorinated biphenyls ("PCBs"); metals; petroleum hydrocarbons (including gasoline and diesel); lubricating oil and waste oil; polycyclic aromatic hydrocarbons and other semi-volatile organic chemicals; pesticides; asbestos (including friable asbestos); lead-based paint; radioactive elements; and flammable liquids.

31. During the BRAC closure process, the Navy made several representations that it would fulfill its lease obligations and remediate the significant environmental contamination present at the Hensley Field site. For example, at a 1995 meeting of the Dallas Naval Air Station Redevelopment Committee ("NASDRC")—consisting of the City of Dallas, the City of Grand Prairie, and the County of Dallas—a Navy representative confirmed that the "Navy is required by law to clean-up contaminated sites." In a draft Environmental Impact Statement filed with the EPA in July 1995, the Navy promised that it would "environmentally restore . . . all land and improvements . . . on the leased portions . . . at the installation prior to property transference." In June 1998, in response to a letter by Dallas expressing concerns about the Navy's adherence to required remediation efforts, the Navy stated that it "intend[ed] to fulfill its obligation to complete environmental investigation and remediation." And in September 1998, NASD Base Commander Sean King assured the public in a news interview that a small Navy command staff would remain as caretakers after closure and would "be responsible for cleanup of the entire site."

C. The 2001 Court of Federal Claims Lawsuit Regarding the Hensley Field Site

32. Despite the substantial environmental contamination at the Hensley Field site and the lack of a definitive plan for its cleanup, the Navy sent a letter on March 10, 1999, notifying Dallas that it intended to terminate the NASD Lease in sixty days. The termination letter prompted several discussions between Dallas and the Navy to attempt to resolve a dispute over the Navy's responsibility for the condition and cleanup of the Hensley Field site.

33. Although core disputed issues were unresolved, the Navy notified Dallas on May 7, 1999, that it considered the NASD Lease terminated as of May 10, 1999. The Navy also notified Dallas on the same day that it was relinquishing the Reverter Property, which it also intended to revert to Dallas on May 10, 1999. In response, Dallas repeatedly informed the Navy that the City did not and could not accept the return of either the Leased Property or Reverter Property in their contaminated conditions. Dallas and the Navy engaged in further negotiations regarding the Navy's return of the property at the Hensley Field site to Dallas and the cleanup actions that the Navy would take.

34. On May 9, 2001, unable to reach a satisfactory agreement with the Navy, Dallas filed a complaint in the United States Court of Federal Claims styled *City of Dallas, Texas v. United States of America*, No. 1:01-cv-00284. In that complaint, Dallas asserted that the United States, acting by and through the Navy and the DOD, had breached certain contractual obligations arising under the NASD Lease and Reverter Property deed, and that certain conduct by the United States constituted a permanent or temporary taking of private property without just compensation in violation of the United States Constitution. The United States timely filed an answer to Dallas' complaint in the 2001 CFC Lawsuit.

35. On September 4, 2001, Dallas also served upon the Navy and DOD a Notice of Intention to Sue for Violations of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”), alleging certain violations of RCRA and the Texas Solid Waste Disposal Act, Tex. Health & Safety Code, Ch. 361 (“TSWDA”) arising out of the Navy and DOD’s conduct at NASD.

D. The 2002 Settlement Agreement

36. After negotiations, Dallas and the United States were able to resolve the 2001 CFC Lawsuit and entered into the Settlement Agreement, effective August 21, 2002, which was submitted to the Court of Federal Claims. A copy of the Settlement Agreement is attached to this Complaint as Exhibit A.

37. Under the terms of the Settlement Agreement, the United States explicitly agreed to remediate the Hensley Field site in accordance with the procedures and requirements of the TRRP as administered by the Texas Commission on Environmental Quality (“TCEQ”) to attain Remedy Standard A. Under the TRRP, TCEQ—which is the environmental agency for the State of Texas—requires that the party responsible for clean-up take actions to remediate TRRP-defined contaminants of concern (“COCs”) present on the property. Compliance with Remedy Standard A is achieved when the concentration levels of all present COCs fall below the respective Residential critical primary contaminant levels (“PCLs”). These PCLs are defined under the TRRP for each COC. Under Remedy Standard A, a party may neither use institutional or engineering controls nor impose other restrictions upon the use of soil or groundwater to ensure that a property does not pose a threat to human health or the environment.

38. The only exceptions to compliance with the TRRP Remedy Standard A were for the Runway Extension and for two buildings located on the property. Under the Settlement

Agreement, remediation of the Runway Extension was governed by a deed dated February 11, 2000. The Settlement Agreement also provided that “with respect to Building 20 (north annex only) and Building 156, if Dallas shall determine to preserve either structure without demolition, despite the existence of soil contamination underneath the structure, the Applicable Remedy Standard shall not apply to the soil beneath such structures, and within a reasonable clearance radius around the exterior walls of such structures for the operation of equipment. The alternate remedy standard for such soils shall be the Texas Risk Reduction Program [] Remedy Standard B.”¹⁰

39. The United States agreed to use monitored natural attenuation as the primary remedial method for groundwater,¹¹ subject to approval by TCEQ. The Settlement Agreement provided that “[i]n the event the TCEQ does not approve the proposed remediation method, or ongoing groundwater monitoring discloses the need for more active remedial measures to be undertaken in order to complete groundwater remediation to the Applicable Remedy Standard within 15 years following commencement of the work, the United States shall undertake such measures in a timely manner.”¹²

40. The Settlement Agreement also described certain specific actions that the United States would take to remediate Hensley Field to achieve TRRP Remedy Standard A. These actions included, but were not limited to, “remediate or remove contaminated surface and subsurface soils within the Property to demonstrate achievement of the Applicable Remedy Standard (except to the

¹⁰ Settlement Agreement ¶ 13(h).

¹¹ Monitored natural attenuation relies on natural processes to decrease concentration of contaminants in soil or groundwater and involves monitoring to ensure that contaminant concentrations are decreasing over time.

¹² Settlement Agreement ¶ 13(d).

extent otherwise agreed to in writing by Dallas and approved by TCEQ, and except as specifically provided in Paragraph 13h with respect to Building 20 and Building 156),”¹³ remediating two ponds located on the property, remediating or removing the contents of a landfill on the property, removing or otherwise abating all damaged, friable, and accessible asbestos containing materials from certain buildings located on the property, removing all underground steam piping on or within the property, abating lead-based paint in two residential buildings, and demolishing certain buildings located on the property.¹⁴ In addition, the United States was to “promptly pay Dallas \$18,550,000,” and the Navy was to “commit to the Agreed Remediation at least \$26,000,000 of funds.”¹⁵

41. The United States agreed to “complete the Agreed Remediation field work within 36 months of commencement,”¹⁶ with the exception of groundwater remediation, where it was to “demonstrate achievement of the Applicable Remedy Standard (except to the extent otherwise agreed to in writing by Dallas and approved by TCEQ) no later than 15 years after commencement of the work.”¹⁷ On-site field work in connection with the remediation was to start “on or before 90 days following execution of this agreement by all parties, subject to Unavoidable Delay.”¹⁸ “Unavoidable Delay” was defined as “a delay resulting from inclement weather preventing onsite activity; TCEQ, EPA, or other Agency review of [Navy] submissions or requests for concurrence;

¹³ *Id.* ¶ 13(a)

¹⁴ *Id.* ¶¶ 13(b)–(c), (e)–(h).

¹⁵ *Id.* ¶ 12.

¹⁶ *Id.* ¶ 14(b).

¹⁷ *Id.* ¶ 13(d).

¹⁸ *Id.* ¶ 14(a).

or building or development permit processing.”¹⁹ The Settlement Agreement also required the United States to provide “periodic reports of Unavoidable Delays to Dallas.”²⁰

42. Furthermore, the Settlement Agreement provided that “[i]n the event that further investigation, TCEQ review of reports, or subsequent events reveal the necessity for ‘New Work’, the United States will, as quickly as reasonably feasible under the circumstances, remediate that contamination so that the condition of the Property conforms with the Applicable Remedy Standard”²¹ “New Work” was defined as “any activity that is not described in [the Navy’s] Work Plan [addendum] and that the United States elects (or is required by the Terms of this Agreement) to pursue in connection with the Agreed Remediation.”²² “New Work,” however, extended the deadline for remediation only on a “day-for-day basis, based upon reasonable [Navy] estimates of work periods.”²³ The Settlement Agreement required the United States to provide “a minimum of 30 days’ advance notice to Dallas” of any New Work.²⁴

43. Although the Settlement Agreement released Dallas and the United States from certain claims that they might have against each other arising out of conduct or events relating to NASD or the Hensley Field site, the Settlement Agreement explicitly carved out and reserved “all obligations of the parties referred to in [the Settlement] Agreement, until such time as they are fully

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* ¶ 14(c).

performed and any claims, liabilities, or obligations attributable to environmental contamination of Mountain Creek Lake by any source.”²⁵

44. In the event of a default by the United States, the Settlement Agreement provided that Dallas would be “entitled to recover damages measured by an amount sufficient to fund completion of the Agreed Remediation by Dallas.”²⁶

45. Additionally, the Settlement Agreement provided that it could not be “modified in any way except by written modification signed by all parties.”²⁷ The Settlement Agreement has not ever been modified.

E. The Partial Remediation of the Hensley Field Site After the 2002 Settlement Agreement

46. Following the execution of the Settlement Agreement, the United States initiated, but failed to complete, remediation of the Hensley Field site according to the terms of the Settlement Agreement.

47. To satisfy its obligations under the Settlement Agreement, the United States was required to remediate the groundwater and soil at the Hensley Field site to attain TRRP Remedy Standard A, in addition to completing certain specified remediation tasks. Attaining Remedy Standard A requires ensuring that the concentration of any COCs present on the property are reduced to levels below the respective Residential PCLs. Remedy Standard A specifically

²⁵ *Id.* ¶ 16(c).

²⁶ *Id.* ¶ 17.

²⁷ *Id.* ¶ 19.

prohibits the party responsible for clean-up from using technical impracticability to limit the appropriate environmental cleanup response.²⁸

48. Pursuant to the Settlement Agreement, and as part of attaining Remedy Standard A, the United States was required to adhere to the procedures and requirements of the TRRP. Under TRRP, after a remediation action is initiated, the party responsible for cleanup must submit Response Action Effectiveness Reports (“RAERs”) at periodic intervals designated by TCEQ.²⁹ In each RAER, the party responsible for clean-up describes the status of the remediation efforts and its plans for remediation. Interested parties may provide comments on each RAER. If upon review of the RAER, TCEQ determines that insufficient progress is being made, TCEQ will request that remediation action effectiveness be improved or the remediation action be changed. When groundwater and soil sampling of the property at issue indicate that COC concentrations are below the respective PCLs, the party responsible for cleanup must submit a Response Action Completion Report (“RACR”) to TCEQ for approval. If TCEQ confirms that no additional cleanup is required, it issues a “No Further Action” letter and the environmental remediation is deemed to be completed.

49. The Navy initially decided to self-implement its remediation efforts at the Hensley Field site. In May 2003, Tetra Tech, a third-party engineering consultant for the Navy submitted a Self-Implementation Notice (“SIN”) to TCEQ. The SIN described the Navy’s planned remedial

²⁸ 30 Texas Admin. Code § 350.32(e) (“The person cannot use a demonstration of technical impracticability when responding to soil and/or groundwater PCLE zones, or other affected environmental media under Remedy Standard A.”).

²⁹ TCEQ Regulatory Guidance RG-366/TRRP-28, Application of Remedy Standards A and B at 9 (2009), available at <https://www.tceq.texas.gov/downloads/remediation/trrp/application-of-remedy-standards-a-and-b-trrp-28.pdf>. For the remediation of the Hensley Field site, the Navy was required to submit annual RAERs concerning its groundwater remediation efforts.

efforts to address soils and groundwater that exceeded TRRP Remedy Standard A concentrations at the Hensley Field Site within a reasonable amount of time.

50. Throughout 2003 and 2004, the Navy initiated remedial actions at the Hensley Field site, including excavation and disposal of soil at Solid Waste Management Units (“SWMUs”) located throughout the Hensley Field site. By June 2004, the Navy reported to Dallas that it was ninety percent completed with the non-groundwater remediation efforts at the Hensley Field site—which included contaminated soil removal, asbestos abatement, lead-based paint abatement, demolition of certain structures, and restoration of certain work sites.

51. In May 2004, the Navy submitted its 2003 Groundwater RAER to TCEQ. This was the first annual RAER that the Navy submitted regarding the Hensley Field site. In accordance with the 2003 Groundwater RAER, the Navy installed groundwater monitoring wells at SWMUs located on the property that required groundwater remediation. These monitoring wells were meant to facilitate the monitored natural attenuation of the groundwater contaminants present at the Hensley Field site.

52. Afterwards, the Navy continued its remedial work at the Hensley Field site, including monitoring and reporting on the status of the groundwater contamination in its annual groundwater RAERs submitted to TCEQ. Additionally, the Navy evaluated and reported on several other active groundwater remediation methods, such as a 2006 pilot study involving the pressurized injection of Zero Valent Iron into the ground at the Hensley Field site to increase the degradation rate of trichloroethene, a chlorinated solvent COC.

53. By July 2008, TCEQ determined that although many of the SWMUs at the Hensley Field site had been successfully remediated, certain SWMUs—including SWMUs 18, 21, 79, 85, 86, 136, 138, and 139—required further action to address contaminated groundwater located at

each SWMU. Likewise, the Navy's 2007 Groundwater RAER indicated that groundwater contamination at the SWMUs that had not yet been successfully remediated included chlorinated solvent COCs, such as cis-1,2-dichloroethene, tetrachloroethane, trichloroethene, and vinyl chloride. Accordingly, the Navy continued its remediation efforts.

54. In the 2000s and early 2010s, PFAS became an increasingly prominent emerging contaminant. Dallas raised concerns regarding potential PFAS at the Hensley Field site with the Navy in 2012. These concerns were well-founded, given the history of firefighting activities and extensive use of AFFF firefighting products at NASD.

55. TCEQ added PFAS to the list of COCs under TRRP in 2014.

56. In 2016, after being compelled by TCEQ, the Navy began an investigation into the presence of PFAS at the Hensley Field site. Subsequently, in March 2017, the Navy released a summary of its findings, which included confirmation that PFAS chemicals were present in varying concentrations throughout the Hensley Field site.

57. In addition to the PFAS present throughout the Hensley Field site, by the Settlement Agreement's late 2017 remediation deadline, certain COCs also remained in the groundwater at the Hensley Field site, including the following chlorinated solvents: 1,1-dichloroethene, 1,2-dichloroethane, cis-1,2-dichloroethene, tetrachloroethene, trichloroethene, and vinyl chloride (collectively, the "Chlorinated Solvent COCs").

F. The Late 2017 Breach of the Settlement Agreement

58. On January 20, 2018, the Navy submitted its 2017 Groundwater RAER to TCEQ. In its response, issued on June 21, 2018, TCEQ confirmed that the 2017 RAER identified "6 [SWMUs] where evaluation of remedy progress indicates that the 2017 clean up goals have not been met." The six identified SWMUs were SWMU 17 (Building 1429), 18, 21, 79 (136 Central

Plume), 86, and 138. For these SWMUs, groundwater and soil sampling indicated that COC levels, including the Chlorinated Solvent COCs and PFAS, remained above the relevant PCLs necessary to achieve the required TRRP Remedy Standard A. In other words, the Navy had not completed the Approved Remediation by the late 2017 deadline. The Navy confirmed its failure to complete remediation in a May 9, 2019, letter to the Mayor of Dallas, in which the Navy wrote it had not met “the applicable remedy standard for ground water at eight remaining plumes on City property.”

59. Under the terms of the Settlement Agreement, the United States agreed to “[r]emediate or remove contaminated surface and subsurface soils within the Property,” and “[r]emediate the contaminants in groundwater under and within the Property.”³⁰ With respect to both forms of contamination, the United States agreed to remediate the contamination so the property conforms with Remedy Standard A.

60. Remedy Standard A requires a party to “[r]emove and/or decontaminate the surface soil, subsurface soil, and groundwater [protective concentration level exceedance (“PCLE”)] zones, other environmental media, and non-hazardous waste to achieve COC concentration levels below the residential or commercial/industrial critical PCL, as applicable.”³¹ The obligated party “shall remediate the affected property such that the concentration of COCs in surface soil, subsurface soil, groundwater, and other environmental media do not exceed the applicable critical PCLs” to satisfy the requirement that the remedial actions “result in permanent risk reduction at an affected property.”³²

³⁰ Settlement Agreement ¶¶ 13(a), (d).

³¹ 30 TAC § 350.32.

³² *Id.*

61. The Chlorinated Solvent COCs and PFAS are COCs for purposes of the TRRP and are subject to established protective concentration levels for both groundwater and residential soil.³³ PFAS were added to the PCL table in 2014 while the Chlorinated Solvent COCs have been listed in the PCL table since the table's original publication in 1999.³⁴

62. The Chlorinated Solvent COCs and PFAS have thus been known COCs during the relevant time period and have had relevant PCLs for groundwater and residential soil. Additionally, nothing in the Settlement Agreement excludes remediation of COCs identified after the execution of the Settlement Agreement. Thus, in order to comply with its remediation obligations under Remedy Standard A pursuant to the parties' Settlement Agreement, the United States was obligated to remediate the contaminated soil and groundwater so that the Chlorinated Solvent COCs and PFAS concentration levels were below the relevant PCLs. The United States has failed to do so and has therefore breached the Settlement Agreement.

63. In the alternative, even if PFAS contamination were beyond the scope of the originally agreed-upon remediation plan, the United States was still obligated to remediate the PFAS contamination as quickly as feasible. In Paragraph 14(a) of the Settlement Agreement, the United States agreed to remediate "as quickly as reasonably feasible under the circumstances" any "New Work" that is subsequently revealed as being necessary.³⁵ Under that paragraph, the Navy was required to generate reasonable estimates of work periods, and the Navy and the United States

³³ See TCEQ, "May 2023 Tier 1 PCL Table." Available at <https://www.tceq.texas.gov/downloads/remediation/trrp/march-2023-pcl-tables.pdf> (listing several perfluoroalkyl substances and reporting applicable groundwater and residential soil protective concentration levels).

³⁴ See *id.*; see also September 2014 PCL Tables. Available at <https://www.tceq.texas.gov/remediation/trrp/trrppcls.html>.

³⁵ Settlement Agreement ¶ 14(a).

were required to remediate the newly discovered contamination “as quickly as reasonably feasible.”³⁶

64. The Navy and the United States also have failed to meet these obligations. The administrative record reveals that the Navy and the United States have not diligently pursued either the investigation or the remediation of the PFAS contamination. Instead, the United States waited years to consider or act upon the City’s and TCEQ’s requests to address this widespread contamination. There is still no definitive timeline in place for the remediation of the remaining PFAS and Chlorinated Solvent COCs contamination at the site.

65. For example, in June 2018, TCEQ refused to approve the Navy’s 2017 RAER from January of 2018, noting that the Navy’s response plan contained a number of gaps with respect to the Navy’s investigation of PFAS contamination, and its plan for remediating that contamination. TCEQ noted that “[t]he 2017 RAER did not include an evaluation of the Phase I PFAS sampling results with regards to compliance with Texas Risk Reduction Program (TRRP) PFAS Tier 1 groundwater PCLs.” TCEQ then instructed the Navy to update its 2017 RAER to include a “summary of the nature and extent of PFAS contamination identified to-date.”³⁷ TCEQ also expressed concern that the Navy had not investigated the scope of the potential PFAS contamination in accordance with TCEQ’s policies, and instructed the Navy to submit all applicable information. Similarly, during a meeting with Dallas on December 12, 2018, the Navy indicated that they would not commit to a certain date to complete the outstanding remediation of contamination at the Hensley Field site.

³⁶ *Id.*

³⁷ TCEQ Comments at 4 (June 28, 2018).

66. In addition to breaching its obligations to investigate the contamination diligently, the Navy has been even more languid in developing and implementing a remediation plan. On June 4, 2021, the City's consultant, Terracon, submitted comments on the Navy's 2020 RAER, noting that the Navy had not yet developed "appropriate remedial approaches" to address PFAS (and other contaminants) in several plumes to remediate all COCs to TRRP Remedy Standard A Tier 1 groundwater PCLs. The comments identified the following plumes: Building 1429 Plume; SWMU 18 Plume; SWMU 21 Plume; 136 Central Plume; SWMU 86 Plume; SWMU 136 North Plume; SWMU 138 Plume; and as-of-then undefined SWMUs for other PFAS-contaminated areas. In the annotated image below (Figure 1), which was taken from the Navy's 2017 Groundwater RAER, the location of certain SWMUs are labelled on a map that highlights the boundaries of the Hensley Field site.



Figure 1. Map of NASD at the Hensley Field Site.

G. The Current Status of the Hensley Field Site

67. Despite the United States' continued failure to meet its obligations under the Settlement Agreement, Dallas remains committed to collaborating with the United States and facilitating the remediation of the Hensley Field site. For example, in January 2019, the Navy requested that Dallas provide a redevelopment plan for the Hensley Field site to guide the Navy's uncompleted environmental remediation. In response, Dallas coordinated with numerous stakeholders, community members, and technical advisors over 18 months to prepare an extensive Master Plan for the redevelopment of the Hensley Field site. This Master Plan describes the potential for the Hensley Field site to promote economic recovery, social equity, and environmental sustainability—including by accommodating more than 12,000 jobs and 12,000 residents in a proposed mix of commercial, institutional, and residential use of the property.

68. Yet, the remaining environmental contamination at the Hensley Field site, including chlorinated solvents and PFAS in groundwater and PFAS in soil, has put Dallas' Master Plan in a state of limbo and precludes any commercially viable use for the majority of the property.

69. In January 2023, the United States submitted its 2022 Groundwater RAER, which confirms the continued presence of environment contamination at the Hensley Field site. In particular, the 2022 Groundwater RAER notes that certain COC concentrations remain above TRRP Remedy Standard A PCL levels at SWMUs 17, 18, 21, 79, 85, 86, and 138. Moreover, the 2022 Groundwater RAER acknowledges that TRRP Remedy Standard A was not attained by the late 2017 deadline. For example, with regards to SWMU 17, the 2022 Groundwater RAER stated “the remedy ([monitored natural attenuation]) selected in the 2006 Groundwater RAP (Revision 2) at SWMU 17/Building 1429 Plume did not achieve the critical PCLs within the time frame specified.”

70. The United States still has not provided a definitive timeline for completing the cleanup of the property. Moreover, the current fair market value of the Hensley Field site is greatly diminished because of the continued presence of environmental contamination. As a result, Dallas brings this action to avoid bearing the costs caused by the failure of the United States to meet its obligations under the Settlement Agreement and to allow for the Hensley Field site to be redeveloped in accordance with the Master Plan.

71. The factual allegations set forth above give rise to the following causes of action.

FIRST CAUSE OF ACTION
BREACH OF SETTLEMENT AGREEMENT

72. Dallas re-alleges and incorporates the preceding Paragraphs as if fully set forth herein.

73. The Settlement Agreement is a valid, binding contract to which Dallas and the United States are parties.

74. Pursuant to the Settlement Agreement, the United States is obliged to remediate the environmental contaminants at the Hensley Field site according to the procedures and requirements of the TRRP, as administered by TCEQ, to satisfy Remedy Standard A by late 2017. Meeting this obligation required reducing COC concentrations in groundwater and soil below the Residential PCLs defined by the TRRP. During the relevant time period, TRRP COCs included the Chlorinated Solvent COCs and PFAS.

75. The Settlement Agreement did not limit the relevant COCs required to be remediated to those identified as of the date of the Settlement Agreement.

76. The United States has failed to remediate the environmental contamination at the Hensley Field site to Remedy Standard A within the time specified by the Settlement Agreement—

including by failing to remediate the Chlorinated Solvent COCs and PFAS in groundwater and failing to remediate PFAS in soil.

77. The United States has acknowledged the continued presence of the Chlorinated Solvent COCs and PFAS at concentrations exceeding the TRRP Residential PCLs at the Hensley Field site.

78. Remediation of the Chlorinated Solvent COCs and PFAS to concentrations below the TRRP Residential PCLs at Hensley Field is technologically feasible.

79. Furthermore, to the extent that remediation of PFAS constitutes “New Work” under the Settlement Agreement, the United States still failed to meet the Settlement Agreement’s requirement to remediate that contamination as quickly as reasonably feasible under the circumstances. The United States still has not provided a definitive timeline for the remediation of PFAS at the Hensley Field site.

80. Dallas has fully performed its obligations under the Settlement Agreement.

81. The failure of the United States to perform its remediation obligations materially breaches the Settlement Agreement, and Dallas has been damaged as a direct and proximate result of the United States’ conduct, including because Dallas has been unable to implement its Master Plan for redevelopment of the Hensley Field site into action or to use, lease, or sell the majority of the property for any commercially feasible purpose.

82. Dallas has incurred, and will continue to incur, significant damages as a result of the United States’ breach of the Settlement Agreement. Under the terms of the Settlement

Agreement, Dallas is entitled, at a minimum, to recover damages measured by an amount sufficient to fund completion of the remaining remediation by Dallas.³⁸

SECOND CAUSE OF ACTION
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

83. Dallas re-alleges and incorporates by reference the preceding Paragraphs as if fully set forth herein.

84. The Settlement Agreement is a valid binding contract to which Dallas and the United States are parties.

85. The Settlement Agreement contains an implied duty of good faith and fair dealing. Pursuant to the implied duty of good faith and fair dealing, the United States was required to perform its duties under the Settlement Agreement reasonably and in good faith and to refrain from actions that are detrimental to Dallas' contractual rights.

86. The United States breached its implied duty of good faith and fair dealing by depriving Dallas of the contemplated value of the Settlement Agreement, including by failing to act with reasonable diligence to remediate the remaining contamination at the Hensley Field site, evading the City's requests for a definitive timeline for the remediation of the remaining contamination, and refusing to commit to remediating the PFAS present at the Hensley Field site.

87. Dallas has been damaged as a direct and proximate result of the United States' breach of its duty of good faith and fair dealing, including because Dallas has been unable to realize the contemplated value of the Settlement Agreement by having a remediated Hensley Field site that can be reused and redeveloped according to the City's Master Plan for redevelopment.

³⁸ Settlement Agreement ¶ 17.

88. Dallas has incurred, and will continue to incur, significant damages as a result of the United States' breach of its duty of good faith and fair dealing. Under the terms of the Settlement Agreement, Dallas is entitled, at minimum, to recover damages measured by an amount sufficient to fund completion of the remaining remediation by Dallas.³⁹

THIRD CAUSE OF ACTION
TAKING OF PROPERTY WITHOUT JUST COMPENSATION

89. Dallas re-alleges and incorporates by reference the preceding Paragraphs as if fully set forth herein.

90. Dallas has cognizable and protected real property interests in the Hensley Field site, including its ownership of the entire Hensley Field site.

91. The United States intentionally possessed and used the entire Hensley Field site for public purposes during its decades-long operation of NASD as a military base. The operation of NASD and knowing use of hazardous substances and other chemicals of concern by the United States created foreseeable environmental contamination at the Hensley Field site, including the presence of the Chlorinated Solvent COCs and PFAS in the groundwater, in addition to PFAS in the soil.

92. The United States failed to remediate conditions at the Hensley Field site, which has had the foreseeable direct and proximate result of rendering Dallas unable to put its Master Plan for redevelopment of the Hensley Field site into action or otherwise use, lease, or sell the majority of the property for any commercially feasible purpose. This constitutes an infringement of Dallas' property rights in the Hensley Field site, including its right to use the property for economic benefit.

³⁹ Settlement Agreement ¶ 17.

93. By causing and failing to remediate significant environmental contamination, the United States has deprived Dallas of the economically viable or beneficial use of the Hensley Field site, which constitutes a taking by the United States of the property.

94. Additionally, the United States failed to remediate or otherwise correct conditions at the Hensley field site, which has resulted in the indefinite physical occupation of the property by environmental contaminants, including the Chlorinated Solvent COCs and PFAS that remain in groundwater and PFAS that remains in soil. This constitutes an infringement of Dallas' property rights in the Hensley Field site, including its right to use the property for economic benefit.

95. By causing a permanent and/or temporary physical occupation of the Hensley Field site by environmental contaminants and failing to remediate contamination, the United States has effected a taking of the property.

96. The contamination of the Hensley Field site was a direct, natural or probable result of an authorized activity. That contamination and failure to remediate it also appropriated a benefit to the United States, at the expense of the City of Dallas. The contamination and failure to remediate also preempted the City of Dallas' right to enjoy the Hensley Field site for an extended period of time, extending through the present day, and will continue to do so until the contamination is remediated.

97. The United States has failed to pay just compensation for its taking of Dallas' property at the Hensley Field site.

98. Pursuant to the Fifth Amendment of the United States Constitution, Dallas is entitled to just compensation for the United States' taking of the City's property for an amount to be proven at trial.

99. Pursuant to 42 U.S.C. § 4654(c), Dallas also is entitled to recover its reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees incurred because of this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. A money judgement in an amount as yet unascertained, according to proof at trial, but estimated to be well above \$10,000.

B. Such other relief, including Plaintiff's reasonable fees and expenses incurred herein, together with pre- and post-judgment interest and all other relief, at law or in equity, as the Court may deem appropriate.

Dated: August 2, 2023

s/ Sarah L. Wilson
Sarah L. Wilson
Attorney of Record

COVINGTON & BURLING LLP
One CityCenter, 850 Tenth Street, N.W.
Washington, DC 20001
Telephone: 202-662-6000
Email: swilson@cov.com

Of Counsel:

Thomas Brugato
Brooke Stanley
Tyler Williams
Jesse Chang

COVINGTON & BURLING LLP
One CityCenter, 850 Tenth Street, N.W.
Washington, DC 20001
Telephone: 202-662-6000

Tammy L. Palomino
Interim City Attorney

Jennifer C. Huggard
Chief of Litigation

Charles A. "Cal" Estee
Assistant City Attorney

CITY ATTORNEY OF THE CITY OF
DALLAS

City of Dallas, Texas
Dallas City Hall
1500 Marilla Street, Suite 7DN
Dallas, Texas 75201
Telephone: 214-670-3519

EXHIBIT A

COPY

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CITY OF DALLAS; TEXAS,)	
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES,)	
)	
Defendant.)	

No. 01-284 C
(Chief Judge Baskir)

Received
OCT 25 2002
Remediation Division
Corrective Action Section

SETTLEMENT AGREEMENT

For the purpose of disposing of this action, without there being further judicial proceedings and without there being any trial or adjudication of any issue of fact or law, and for no other purpose, the United States and the City of Dallas, a Texas home rule municipality ("Dallas"), stipulate and agree as follows (an index of defined terms is attached as Addendum 1):

1. Beginning in 1929, the United States government occupied portions of Hensley Field, the site that came to be known as Naval Air Station Dallas ("NASD"), through agreements with Dallas, the owner of most of the property.
2. a. One portion of the site (approximately 30 acres) was purchased from Dallas by the United States in December 1940 pursuant to a Warranty Deed (the "Reverter Deed") providing that the property was conveyed "upon the express condition and limitation that it will be used by the United

States Government for the purpose of a United States Naval Training Base, and in the event the United States Government shall cease to use the property then this deed of conveyance shall become ipso facto null and void and of no further effect and the title shall revert back to the City of Dallas, free and clear of any encumbrance whatsoever” The property subject to this Reverter Deed is hereinafter referred to as the “Reverter Property.”

b. A larger portion of the NASD site (approximately 722 acres) was leased by Dallas to the United States pursuant to a Lease (No. NOY(R)-44881) dated July 1, 1949, which was subsequently modified on ten separate occasions (the “NASD Lease”). The property subject to the Lease is hereinafter referred to as the “Leased Property.”

c. In 1955, the United States extended the primary runway serving NASD approximately 500 feet into the adjacent Mountain Creek Lake, purchasing the newly-created land (approximately 14.1 acres) from the utility that used the lake as a cooling reservoir. This tract, which is contiguous to the Leased Property, is hereinafter referred to as the “Runway Extension.” The United States conveyed ownership of the Runway Extension to Dallas pursuant to a Deed Without Warranty dated February 11, 2000, which limits future use of the Runway Extension to “nonresidential use . . . to include industrial use, and also to include any commercial use, office use, recreational use or use

incidental to the aforementioned use if such incidental use is (1) permitted by applicable regulatory authorities; and (2) if such incidental use does not require further environmental remediation beyond that required for industrial use” of the Runway Extension.

3. The property that is the subject of this Agreement (which includes the Reverter Property, the Leased Property, and the Runway Extension) is more particularly described on Addendum 2 attached hereto and incorporated herein (the “Property”).

4. In 1993, the Base Realignment and Closure Commission announced that NASD was one of the military bases slated for closure under the Defense Base Closure and Realignment Act of 1990, as amended, 10 U.S.C. § 2687 (“BRAC”). NASD officially closed as a Naval Air Station effective September 30, 1998.

5. On March 10, 1999, DON sent a letter notifying Dallas that it intended to terminate the NASD Lease in 60 days, i.e., effective May 10, 1999. On May 7, 1999, DON notified Dallas by letter that it was relinquishing the Reverter Property, intending it to revert to Dallas as of May 10, 1999.

6. On or about May 9, 2001, Dallas filed a complaint in the United States Court of Federal Claims (“CFC”) styled City of Dallas, Texas v. United States of America, No. 01-284C (the “CFC Lawsuit”). In the CFC Lawsuit,

Dallas asserted that the United States, acting by and through the Department of Navy ("DON") and the Department of Defense ("DOD"), had breached certain contractual obligations arising under the NASD Lease and Reverter Deed, and that certain conduct by the United States constituted a permanent or temporary taking of private property without just compensation in violation of the United States Constitution.

7. The United States timely filed an answer to Dallas's complaint in the CFC Lawsuit, denying liability upon the claims asserted by Dallas, asserting Dallas's failure to state a claim as to some of the matters asserted, and challenging the Court's jurisdiction to grant some of the relief requested by Dallas.

8. On or about September 4, 2001, Dallas served upon DON and DOD a Notice of Intention to Sue for Violations of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA"), alleging certain violations of RCRA and the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE, Ch. 361 ("TSWDA"), arising out of DON's and DOD's conduct at NASD. All claims or causes of action based upon state or federal environmental statutes (including, but not necessarily limited to, RCRA, TSWDA, the Comprehensive Environmental Response, Compensation, Liability Act ("CERCLA"), and the Federal Water Pollution Control Act), or

equitable doctrines that protect health, safety or the environment arising out of conduct or conditions at NASD, whether or not such claims or causes of action are expressly identified in either the RCRA Notice or the CFC Lawsuit, are hereinafter referred to as the “Environmental Claims.”

9. DON has not formally responded to the RCRA Notice, but denies liability for the claims asserted therein and any other Environmental Claims.

10. The parties engaged in negotiations to resolve their disputes and have now agreed to settle all claims, including the Environmental Claims, not expressly reserved in this agreement that each may have against the other based upon the United States’ occupation of, and conduct at, NASD upon the basis of the terms and representations set forth in this Settlement Agreement. The terms of the settlement have been accepted upon behalf of the Attorney General.

11. By entering into this agreement, neither the United States nor Dallas is admitting any wrongdoing or conceding any legal or factual position advocated by either party. Each of the parties to this Agreement denies any liability to any other party herein, and it is fully understood that this Agreement is being made only to settle and compromise existing disputes, to avoid the uncertainties and expense of further litigation, and that this Agreement does

not in any way constitute or imply an admission of liability of any kind or character by any party to this Agreement.

12. Upon execution of this agreement by all parties, the United States shall promptly pay to Dallas \$18,550,000. Further, DON shall commit to the Agreed Remediation at least \$26,000,000 of funds previously appropriated in FY 2002.

13. The United States, through the DON, will discharge any obligation(s) imposed upon the United States by CERCLA 120 (42 U.S.C. § 9620, as delegated to DON by Executive Order 12580) and, within the time period provided in Paragraph 14 (except as otherwise expressly provided in Paragraph 13d), will perform the following remediation (the "Agreed Remediation") upon the Property in accordance with the procedures and requirements of the Texas Risk Reduction Program, 30 TEXAS ADMIN. CODE, Ch. 350, as administered by the Texas Natural Resource Conservation Commission, to be known as the Texas Commission on Environmental Quality ("TCEQ"), to attain Remedy Standard A and achieve contaminant of concern ("COC") concentration levels below the Residential critical primary contaminant levels ("PCLs"), requiring no institutional or engineering controls and no other restrictions upon the use of the soil or groundwater (the "Applicable Remedy Standard"), except as to the Runway Extension, remediation of which shall be

governed by the Deed Without Warranty dated February 11, 2000, and the industrial or other nonresidential uses referenced therein, to the extent such remediation standard is inconsistent with this Agreement. The United States will:

a. Remediate or remove contaminated surface and subsurface soils within the Property to demonstrate achievement of the Applicable Remedy Standard (except to the extent otherwise agreed to in writing by Dallas and approved by TCEQ, and except as specifically provided in Paragraph 13h with respect to Building 20 and Building 156).

b. Remediate the two "TANG Ponds" (identified on Addendum 2) to demonstrate achievement of the Applicable Remedy Standard (except to the extent otherwise agreed to in writing by Dallas and approved by TCEQ). Upon accomplishing this remediation and obtaining closure from TCEQ, the United States will not be responsible for any renewed contamination of the TANG ponds not caused by the United States.

c. Remediate or remove the contents of the construction "Rubble Landfill" (identified on Addendum 2) to demonstrate achievement of the Applicable Remedy Standard (except to the extent otherwise agreed to in writing by Dallas and approved by TCEQ).

d. Remediate the contaminants in groundwater under and within the Property to demonstrate achievement of the Applicable Remedy Standard (except to the extent otherwise agreed to in writing by Dallas and approved by TCEQ) no later than 15 years after commencement of the work, utilizing monitored natural attenuation as the primary remedial method, as approved by the TCEQ. In the event the TCEQ does not approve the proposed remediation method, or ongoing groundwater monitoring discloses the need for more active remedial measures to be undertaken in order to complete groundwater remediation to the Applicable Remedy Standard within 15 years following commencement of the work, the United States shall undertake such measures in a timely manner.

e. Remove or otherwise abate all damaged, friable, and accessible asbestos containing materials ("ACM") from the following buildings: 21, 23, 26, 33, 40, 43, 142, 155, 1239, 1307, and 1411. If, pursuant to Paragraph 13h, Dallas determines, and TCEQ approves, that Building 20 (north annex only) will not be demolished, then Building 20 (north annex only) will be added to the preceding list.

f. Remove all underground steam piping on or within the Property, including all friable asbestos lagging, leaving concrete utility corridors in place, free of ACM.

g. Abate lead-based paint in two residential buildings (202 and 203) in accordance with the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 USC §4851 et seq., and all applicable regulations.

h. Demolish and remove from the Property the debris of the following buildings or structures: 20 (north annex only), 36, 37, 38, 39, 42, 62, 82, 100, 138, 139, 175, 180, 186, 190, 195, 196, 197, 198, 199, 211, 216, 230, and 235. Also, if soil contamination above the Applicable Remedy Standard is detected beneath the building, demolish and remove from the Property the debris of Building 178 and Building 156. With respect to Building 20 (north annex only) and Building 156, if Dallas shall determine to preserve either structure without demolition, despite the existence of soil contamination underneath the structure, the Applicable Remedy Standard shall not apply to the soil beneath such structures, and within a reasonable clearance radius around the exterior walls of such structures for the operation of equipment. The alternate remedy standard for such soils shall be the Texas Risk Reduction Program, 30 TEXAS ADMIN. CODE, Ch. 350, Remedy Standard B, to achieve COC concentration levels below the Industrial critical PCLs, and Dallas agrees to cooperate in any deed restriction of these areas consistent with detected soil contaminants in accordance with the procedures and requirements of TCEQ to attain such alternate remedy standard. Within 90

days after execution of this agreement by all parties, Dallas shall notify the United States of Dallas's determination whether Building 20 (north annex only) or Building 156, or both, shall be demolished.

14. Dallas shall provide the United States (including its contractors, agents, and assigns) reasonable access to the Property at a level and duration necessary to perform the Agreed Remediation and associated tasks listed above, subject to the following terms, ensuring no unreasonable impediment or delay of Property redevelopment and reuse, and consistent with access to and use of the Property by Dallas and any tenants of the Property. Dallas shall impose restrictions upon the use of the Property to the extent and for the time period required to perform the Agreed Remediation under the terms of this Agreement. Accordingly, Dallas shall grant access to the Property for the purposes of performing the Agreed Remediation, subject to the following terms and conditions:

a. The United States shall commence on-site field work in connection with Agreed Remediation on or before 90 days following execution of this agreement by all parties, subject to Unavoidable Delay, and shall provide reasonable advance notice to Dallas of the planned start date. For purposes of this Agreement, "Unavoidable Delay" shall mean a delay resulting from inclement weather preventing onsite activity; TCEQ, EPA, or other agency

review of DON submissions or requests for concurrence; or building or development permit processing. The United States shall furnish periodic reports of Unavoidable Delays to Dallas, in order to facilitate Dallas's planning with respect to future reuse and redevelopment of the Property. Unavoidable Delays shall extend upon a day-for-day basis the period within which the United States agrees to complete the Agreed Remediation. In the event that further investigation, TCEQ review of reports, or subsequent events reveal the necessity for "New Work", the United States will, as quickly as reasonably feasible under the circumstances, remediate that contamination so that the condition of the Property conforms with the Applicable Remedy Standard (except to the extent otherwise agreed to in writing by Dallas and approved by TCEQ) as approved by the TCEQ. "New Work" shall mean any activity that is not described in DON's Work Plan (Addendum 3) and that the United States elects (or is required by the terms of this Agreement) to pursue in connection with the Agreed Remediation. Discovery of the necessity for New Work shall extend upon a day-for-day basis, based upon reasonable DON estimates of work periods, the period within which the United States agrees to complete the Agreed Remediation.

b. The United States shall pursue the Agreed Remediation field work with reasonable commercial diligence and shall complete the Agreed

Remediation field work within 36 months of commencement, subject to either Unavoidable Delay or the need for New Work. The parties acknowledge that either New Work or Unavoidable Delay may extend the work schedule.

c. DON has prepared and Dallas has reviewed DON's Work Plan (Addendum 3), describing generally the activities the United States plans to undertake upon the Property in connection with the Agreed Remediation. With respect to New Work, the United States shall provide a minimum of 30 days' advance notice to Dallas, describing in reasonable detail the planned activity, approximate work and clearance areas, schedule for onsite work, and other details available to the United States pertaining to such activities, in order to allow Dallas to notify tenants and contractors potentially affected by the New Work and minimize disruption of tenant and contractor activities.

d. Dallas shall take all actions reasonably necessary to provide the United States with access to all areas of the Property, including any areas occupied pursuant to a lease or other agreement with Dallas, as necessary to accomplish the Agreed Remediation. For those portions of the Property subject to the lease agreements identified in Addendum 4 hereto, the parties agree to be bound to the terms of Modifications No. 9 and No. 10 to the NASD Lease or to certain Adjustments thereto, as described and included in Addendum 4.

e. The United States confirms that all reasonable measures will be taken so that the Agreed Remediation will not interfere with the installation of water and sewer pipelines currently ongoing at the Property. Dallas estimates that the pipelines will be installed and work completed on or before August 31, 2002. No later than 45 days after completion of this work, Dallas shall provide the United States with copies of as-built drawings locating precisely the water and sewer lines as actually installed.

f. The United States shall cause its contractors, subcontractors, and consultants ("Contractors") performing work upon the Property to maintain the minimum insurance coverage described in Addendum 5, and shall cause its Contractors to name Dallas as an additional insured under such policy or policies. The United States shall provide copies of the certificates of insurance acceptable to Dallas, documenting the Contractors' insurance coverage, upon written request by Dallas.

g. In the event of damage to the Property arising from performance of work upon the Property by the United States or its Contractors, the United States shall restore the damaged property to the same or better condition and, if applicable, same grade level, existing before the commencement of the work that caused the damage, including without limitation any necessary repairs to paving and landscaping. With respect to

damage or destruction occurring during the performance of the Agreed Remediation, including any New Work, repair work may be deferred until completion of the work upon the portion of the Property to be repaired, but in any event shall be completed on or before 45 days following the date agreed for completion of the Agreed Remediation or New Work, in case the damage in question occurred in the course of New Work.

h. The United States shall pay all costs for all materials and labor in connection with the Agreed Remediation work for which it is responsible upon the Property. The United States and its Contractors shall maintain the Property free of any liens or claims of liens arising from any work or other activities the United States or its Contractors may perform upon the Property.

i. Dallas and the United States shall cooperate in good faith over the course of the Agreed Remediation and New Work in order to minimize disruption of Contractors, Property tenants, and future reuse and redevelopment activities of Dallas and tenants or prospective tenants of the Property.

j. If the United States is ever required to return to the Property in order to perform New Work, Dallas shall provide reasonable access to the Property, and impose restrictions upon the use of the Property as necessary

to support performance of those cleanup actions consistent with the terms of this Agreement.

15. a. In order to enhance mutual cooperation, efficient performance of the Agreed Remediation and any New Work, and reuse and redevelopment of the Property in accordance with BRAC policies, the United States and Dallas have agreed that the Agreed Remediation will be carried out under "open book" policies. Each party shall make available to the other upon a timely basis copies of monitoring or sample data, reports, scope of work, work specifications, similar contractor documentation describing any portion of the work to be performed, submissions to regulatory authorities, and written communications from regulatory authorities in connection with the Agreed Remediation or relating to environmental conditions of the Property pertaining to the Agreed Remediation. With respect to regulatory submissions by either party and material technical reports concerning the scope and progress of the Agreed Remediation, the party producing those submissions or reports shall furnish the other party a copy contemporaneously with receipt or submission to the regulatory authorities, but, when reasonably possible, in no event later than five business days prior to any meeting with regulatory authorities concerning those submissions or reports. Each party agrees to regularly apprise the other of the status of any material developments concerning the

Agreed Remediation or information about the potential for New Work to be performed.

b. All public meetings, meetings with representatives of oversight agencies, public planning sessions, and committee gatherings in connection with base closure under BRAC, closure of portions of the Property in accordance with the Applicable Remedy Standard, or reuse and redevelopment of the Property in accordance with adopted reuse and/or redevelopment plans shall be open to participation by the United States and Dallas representatives, and both parties shall cooperate in causing reasonable advance notices of such meetings, planning sessions, and committee gatherings to be provided to representatives of the United States and Dallas.

16. a. The parties shall file a joint stipulation to dismiss the CFC Lawsuit with prejudice not later than 10 days after execution of this Agreement and Dallas's receipt of the cash consideration described in Paragraph 12 above. The dismissal with prejudice shall constitute a complete release of the United States (including DON, DOD, and affiliated departments and agencies, together with their contractors, agents, employees, officers, attorneys, and other representatives) from all claims, counterclaims, and causes of action Dallas might have against the United States arising out of conduct or events

relating to the former NASD or the Property, including, without implied limitation, the Environmental Claims.

b. The United States, and its agents, representatives, Contractors, and assigns, hereby releases Dallas from all claims, counterclaims, and causes of action the United States might have against Dallas arising out of conduct or events relating to the former NASD or the Property, including but not limited to all claims, counterclaims, and causes of action that the United States might have been able to assert in the CFC Lawsuit in response to the claims and causes of action asserted therein by Dallas, the release to be effective upon dismissal of the CFC Lawsuit pursuant to the preceding Paragraph 16a.

c. The releases described in Paragraphs 16a and b, however, do not apply to the following matters, which are expressly reserved:

i. all obligations of the parties referred to in this Agreement, until such time as they are fully performed; and

ii. any claims, liabilities, or obligations attributable to environmental contamination of Mountain Creek Lake by any source.

17. In the event that either party shall default in performance of its obligations under this Agreement, the nondefaulting party may pursue any remedy provided under applicable law on account of such default. In the event

the United States defaults upon its obligation to complete the Agreed Remediation in accordance with the terms of this Agreement, Dallas shall be entitled to recover damages for such default measured by an amount sufficient to fund completion of the Agreed Remediation by Dallas.

18. The United States hereby confirms that Section 330 of Public Law 102-484, providing indemnity under certain circumstances for personal injury and property damage, applies to potential third-party claims arising out of the United States' operation of NASD.

19. Each party to this Agreement acknowledges that this Agreement is being made by free choice without inducement in any way by any statement, promise, or representation not contained in this Agreement. The parties understand and agree that this Agreement contains the entire agreement between the parties and is a final, complete, and exclusive statement of the Agreement and of all of the terms thereof; that this Agreement may not be varied, contradicted, or supplemented by evidence of any prior or contemporaneous oral or written agreement; and that this Agreement cannot be modified in any way except by written modification signed by all parties hereto.

20. This Agreement shall be interpreted, construed, and enforced according to the laws of the United States of America and federal common law

of contracts, and, where applicable and not preempted by federal law, the laws of the State of Texas and the Dallas City Code.

21. The parties hereby represent, warrant, and affirm that they have not assigned, pledged, or otherwise in any way sold or transferred any right, title, interest, or claim that they have or may have by reason of the matters that are the subject of this Agreement, and that they are the sole owners and holders of any such right, title, interest, or claim. The parties further represent, warrant, and affirm that no other action or suit with respect to the matters that are the subject of this Agreement is pending or will be filed in or submitted to any court, administrative agency, or legislative body, except if necessary to enforce the terms of this Agreement. Should there be any violation of the warranties and representations contained in this paragraph, this Agreement shall be null and void.

22. The undersigned persons hereby represent, warrant, and affirm that they have actual authority to sign this Agreement upon behalf of the parties for which their signatures appear, and that in signing this Agreement they are authorized to enter into the covenants and agreements set forth herein upon behalf of such parties.

23. The undersigned persons hereby represent, warrant, and affirm that they have read this Agreement in its entirety and understand all of its terms

and consequences; that they have executed and delivered this Agreement voluntarily and after consulting with counsel of their choice; that they believe this Agreement is in the best interest of the parties upon behalf of which they execute this Agreement; and that no promises or representations have been made by any party hereto that are not expressly stated herein.

24. Notice pursuant to this Agreement shall be given to the parties by hand delivery or U.S. mail, as appropriate under specific circumstances, to the following persons:

UNITED STATES:

Ed Lohr
Southern Division Naval Facilities
Engineering Command
P.O. Box 190010
North Charleston,
South Carolina 29419

CITY OF DALLAS:

Dave Howe
Assistant City Attorney
City of Dallas
Office of the City Attorney
7DN City Hall
1500 Marilla Street
Dallas, Texas 75201

with a copy to:

John D. Tew
Senior Trial Attorney
Department of the Navy
Navy Litigation Office
Office of the General Counsel
720 Kennon Street SE, RM 233
Washington Navy Yard, DC 20374

Either party may change the person(s) designated to receive notice on its behalf or the address(es) for such notice by notifying the other party in writing of any such change(s) pursuant to this paragraph.

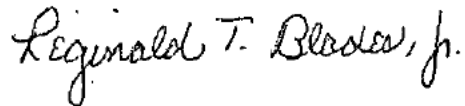
25. The parties agree that this Agreement is in no way related to or concerned with income or other taxes for which Dallas may be liable now or in the future as a result of this Agreement.

26. This Agreement is entered into solely for the purpose of settling this case, and for no other, and shall not bind the parties hereto, nor shall it be cited or otherwise referred to, in any other proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as necessary to effect the terms of this Agreement.

ROBERT D. McCALLUM, JR.
Assistant Attorney General



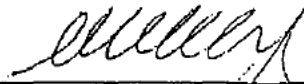
DAVID M. COHEN
Director



REGINALD T. BLADES, JR.
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
Department of Justice
Attn: Classification Unit
8th Floor, 1100 L Street, N.W.
Washington, D.C. 20530
Telephone: (202) 514-7300
Facsimile: (202) 307-0972.

Attorneys for The United States

Date: August 21, 2002



MADELEINE B. JOHNSON
City Attorney
7BN City Hall
1500 Marilla
Dallas, Texas 75201
Telephone: (214) 670-3510
Facsimile: (214) 670-3515

ATTEST:
SHIRLEY A. ACY, City Secretary

by: 



LYNDON F. BITTLE
CARRINGTON, COLEMAN,
SLOMAN & BLUMENTHAL, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: (214) 855-3000
Facsimile: (214) 855-1333

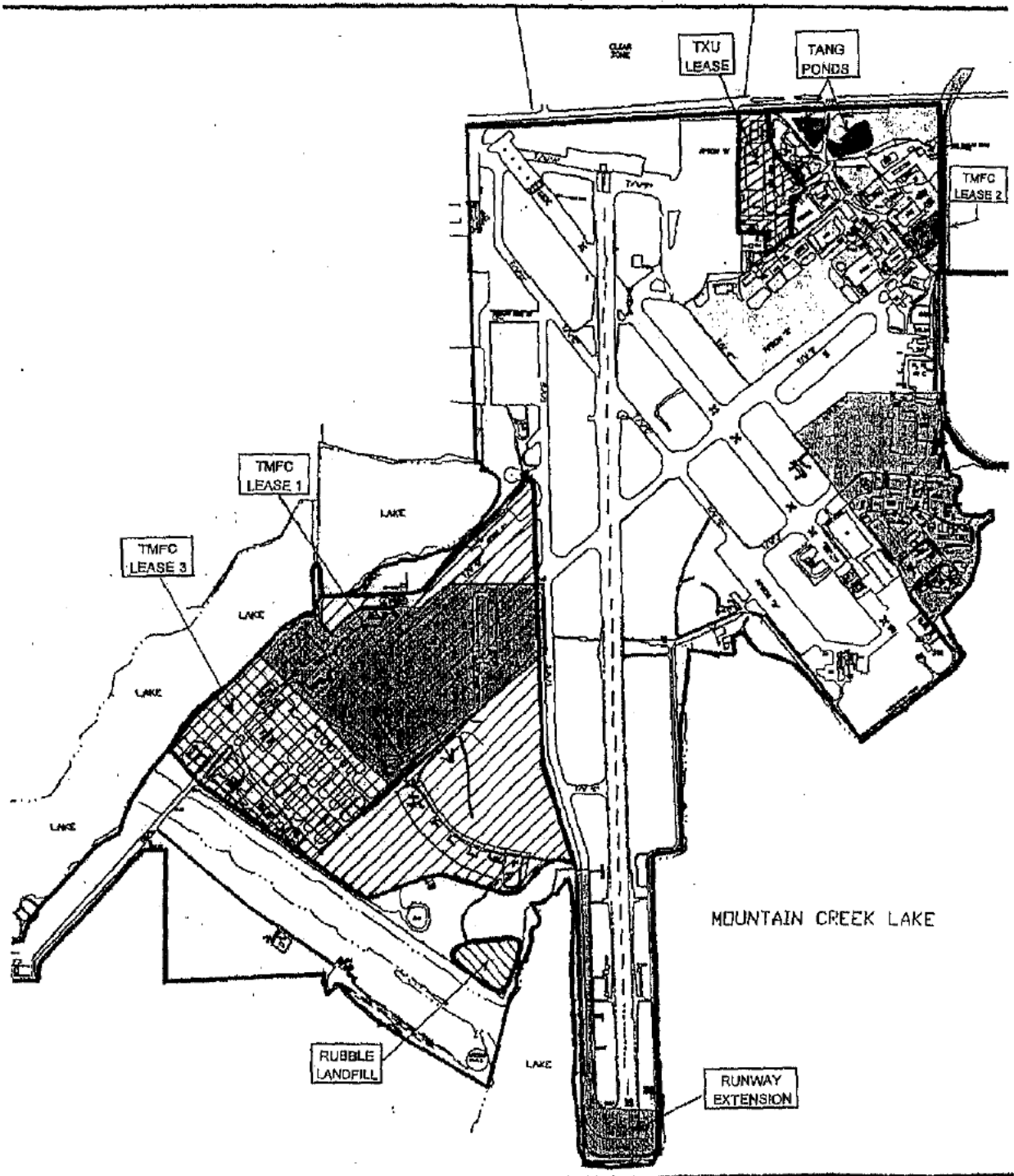
Attorneys for City of Dallas

Date: August 20, 2022

ADDENDUM 1**DEFINITIONS AND ACRONYMS**

Term	Paragraph Defined
ACM	13e
Agreed Remediation	13
Applicable Remedy Standard	13
BRAC	4
CERCLA	8
CFC Lawsuit	6
CFC	6
COC	13
Contractors	14f
DOD	6
DON	6
Environmental Claims	8
Leased Property	2b
NASD Lease	2b
NASD	1
New Work	14a
PCLs	13
Property	3
RCRA	8
RCRA Notice	8
Reverter Property	2a
Reverter Deed	1
Rubble Landfill	13c
Runway Extension	2c
TANG Ponds	13b
TCEQ	13
TSWDA	8
Unavoidable Delay	14a
Work Plan	14c

ADDENDUM 2 Property Description for Settlement Agreement



Source: BRAC Cleanup Plan, March 1994, Figure 2-1

ADDENDUM 3

Attached hereto and incorporated herein as Addendum 3 to the Settlement Agreement is a copy of DON's Presentation to City of Dallas dated March 1, 2002, which is identified in Paragraphs 14a and c of the Settlement Agreement as "DON's Work Plan."

ADDENDUM 3

PRESENTATION TO CITY OF DALLAS

CLEAN-UP OF NAVAL AIR STATION DALLAS TO TEXAS RISK REDUCTION PROGRAM RESIDENTIAL REMEDY STANDARD A



**SOUTHERN DIVISION
NAVAL FACILITIES
ENGINEERING COMMAND**

MARCH 1, 2002

PRESENTATION TO CITY OF DALLAS

**CLEAN-UP OF NAVAL AIR STATION DALLAS
TO TEXAS RISK REDUCTION PROGRAM
RESIDENTIAL REMEDY STANDARD A**



**SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND**

MARCH 1, 2002

PRESENTATION OBJECTIVE

**Share planned approach for expedited clean-up
of Naval Air Station (NAS) Dallas**



SPEAKERS:

Rick Davis - Southern Division

Ed Lohr - Southern Division

Scott Smith - CH2M Hill Constructors Inc. (CCI)

Debbie Wroblewski - Tetra Tech NUS

PRIMARY TECHNOLOGIES

CCI - Scott Smith

- Low Temperature Thermal Desorption (LTTD)
- Electrical Resistance Heating (ERH)
- Electro-Chemical Remediation Technology (ECRT)
- Soil Excavation
- Groundwater Excavation

Tetra Tech NUS - Debbie Wroblewski

- Monitored Natural Attenuation (MNA) and Exit Strategy

SITE NARRATIVES

Southern Division - Ed Lohr

- Defense Reutilization and Marketing Office (DRMO) Groundwater
- Building 42
- Texas Air National Guard (TANG) Ponds
- Asbestos and Residential Lead-based Paint Abatement
- Building Demolition
- Soil Removal Actions
- Main Fuel Farm
- Category D Groundwater
- Building 20
- Groundwater Removal Actions
- Rubble Landfill

(1) Remaining sites at NAS Dallas are proposed for closure to Texas Risk Reduction Program (TRRP) Residential Remedy Standard A in the NAS Dallas Affected Property Assessment Report (APAR) (Tetra Tech NUS, December 2001)

DRMO GROUNDWATER / VOC SOILS (SWMUS 2P AND 60P)

SITE DESCRIPTION: The DRMO storage area [Solid Waste Management Unit (SWMU) 86] was used to store salvageable equipment and furniture, including items such as old desks, wooden crates, aircraft engines, used tires, and used lead/acid batteries. The area is partially fenced and encompasses approximately 1.3 acres.

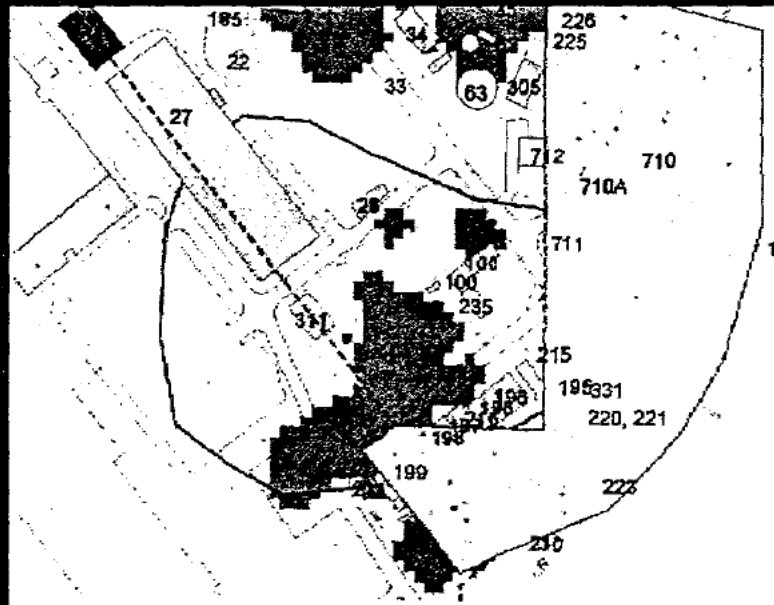


SUMMARY OF CONTAMINANTS :

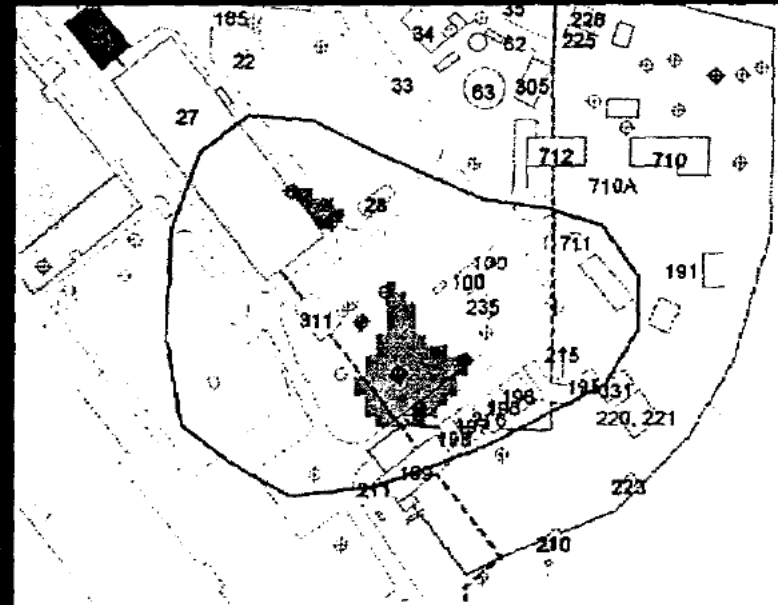
Soil contaminants consist of volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, and metals. Groundwater contaminants consist of chlorinated VOCs.

See Soil Removal Actions for remediation of metals contaminated soils.

DRMO GROUNDWATER / VOC SOILS (SWMUs 2P AND 60P)



Soil Exceedance Map



Groundwater Exceedance Map

Notes:

- (1) Yellow building color indicates building for demolition. Green building color indicates building for asbestos or lead-based paint abatement.
- (2) Red color or symbol indicates exceedance of TRRP Residential Remedy Standard A. Grey symbol indicates location below TRRP Residential Remedy Standard A.

DRMO GROUNDWATER / VOC SOILS (SWMUs 2P AND 60P)

REMEDY STANDARD

TRRP Residential Remedy Standard A

PROPOSED REMEDY

Remediation of VOC-contaminated soil through full-scale electrical resistance heating (ERH) and excavation and off-site disposal of nominal quantity of metals contaminated soil (see Soil Removal Actions).

Remediation of contaminated groundwater through full-scale ERH.

PERMITS/APPROVALS

Electrical permit with City of Dallas; includes Underwriters Laboratory (UL) approval and/or certification of all electrical equipment to be used in pilot study. Site access granted by City following issuance of additional insured.

OTHER CONSIDERATIONS

- Electrical Permit
- Due to potential interferences with the electrochemical remediation technology (ECRT) pilot study at the Building 42 site, ERH is scheduled to begin after completion of ECRT, or approximately 4-6 months following start of ECRT pilot. ERH pilot is scheduled to last approximately 3 mos. Build-out to full scale remedy is estimated to require approximately one year following Navy approval.
- Site access controls

REDEVELOPMENT IMPACT

Limited short-term impact. Above ground wiring and piping will exist throughout pilot study and full-scale treatment. Monitoring wells may be required for build-out.

BUILDING 42 (SWMU 139)

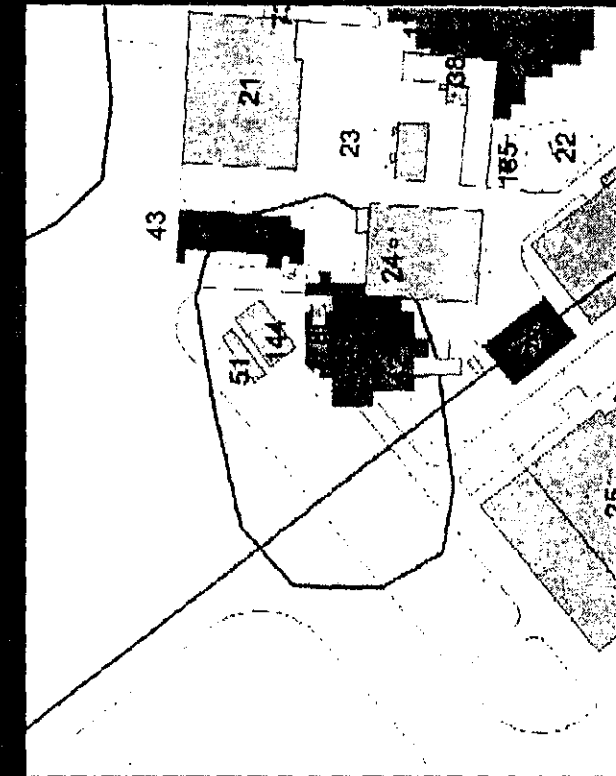
SITE DESCRIPTION: Building 42, the Flammable Storage Building, was constructed in 1942. It stored flammable and hazardous materials from 1943 to 1992. A 1,000-gallon fiberglass underground storage tank (UST) (No. 42-A) located southeast of the building was installed in 1984. This UST received spilled materials from the building floor drain. In 1992, the UST was removed from the site.



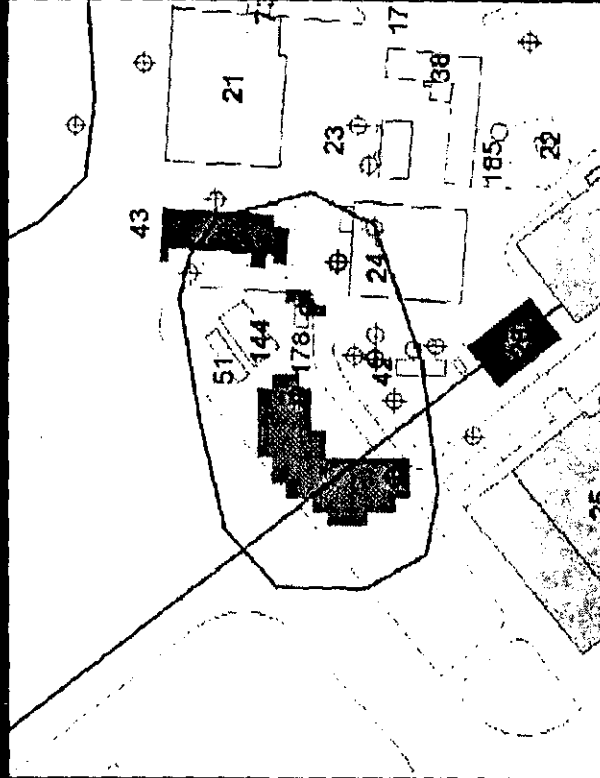
SUMMARY OF CONTAMINANTS :

Soil and groundwater contaminants consist of chlorinated VOCs.

BUILDING 42 (SWMU 139)



Soil Exceedance Map



Groundwater Exceedance Map

Notes:

- (1) Yellow building color indicates building for demolition. Green building color indicates building for asbestos or lead-based paint abatement.
- (2) Red color or symbol indicates exceedance of TRRP Residential Remedy Standard A. Grey symbol indicates location below TRRP Residential Remedy Standard A.

BUILDING 42 (SWMU 139)

REMEDY STANDARD

TRRP Residential Remedy Standard A

PROPOSED REMEDY

Remediation of contaminated soil and groundwater through full-scale ECRT (i.e., operate the field demonstration system to completion).

PERMITS/APPROVALS

Electrical permit with City of Dallas; includes UL approval and/or certification of all electrical equipment to be used in pilot study.

OTHER CONSIDERATIONS

Electrical permit

REDEVELOPMENT IMPACT

Limited short-term impact. Above ground wiring will exist throughout pilot study and full-scale treatment.

TANG PONDS (SWMU 92P)



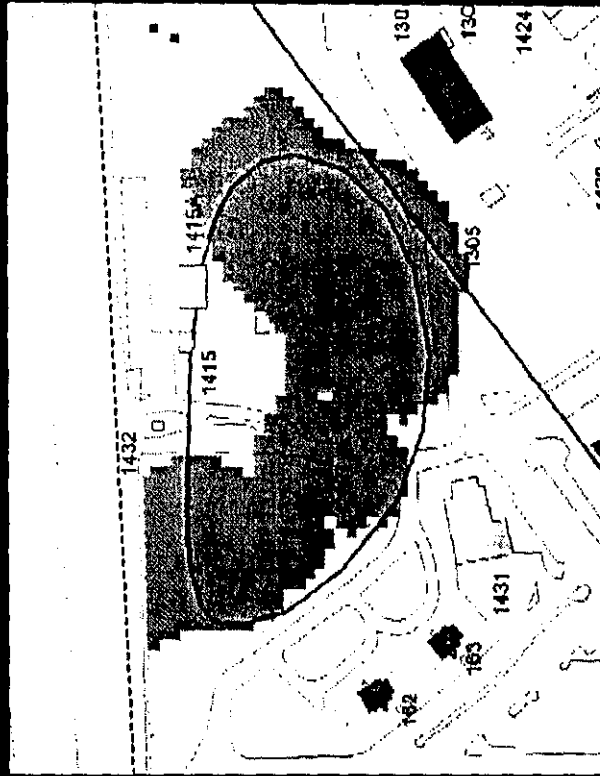
SITE DESCRIPTION:

The TANG Ponds are stormwater detention ponds located near the northern tip of the NAS Dallas property. They are approximately 1.4 acres in area and 4-6 feet deep. The unlined ponds were constructed as part of the initial airfield construction. The majority of the watershed to the ponds is from off-site.

SUMMARY OF CONTAMINANTS :

Primary sediment contaminants consist of polycyclic aromatic hydrocarbons (PAHs), pesticides, and lead.

TANG PONDS (SWMU 92P)



Sediment Exceedance Map

- Notes:
- (1) Yellow building color indicates building for demolition. Green building color indicates building for asbestos or lead-based paint abatement.
 - (2) Red color or symbol indicates exceedance of TRRP Residential Remedy Standard A. Grey symbol indicates location below TRRP Residential Remedy Standard A.

TANG PONDS (SWMU 92P)

REMEDY STANDARD

TRRP Residential Remedy Standard A

REMEDY

Dewatering, excavation, and off-site disposal of contaminated sediments.

PERMITS/APPROVALS

Landfill disposal profile and disposal approval.

OTHER CONSIDERATIONS

- Army Corps of Engineers notification
- Continued off-site impact to TANG Ponds after remediation

REDEVELOPMENT IMPACT

Limited short term. Access to area around ponds limited during excavation and restoration period.

ASBESTOS AND RESIDENTIAL LEAD-BASED PAINT ABATEMENT

WORK DESCRIPTION:

Structures requiring asbestos abatement or lead-based paint abatement:

Asbestos abatement sites:

- Buildings 26, 40, 43, 1239, 1307, 1411

Lead-based paint abatement sites:

- Buildings 202 and 203

ASBESTOS AND RESIDENTIAL LEAD-BASED PAINT ABATEMENT

REMEDY STANDARDS

- Residential Lead-based Paint Hazard Reduction Act of 1992
- National Emission Standards for Asbestos Hazardous Air Pollutants

PROPOSED ACTION

- Abatement of damaged, friable, and accessible asbestos.
- Abatement of lead-based paint.

PERMITS/APPROVALS

Landfill disposal profile and disposal approval for asbestos and lead-based paint. Texas Department of Health Permit for asbestos and lead-based paint abatement.

BUILDING DEMOLITION

WORK DESCRIPTION:

The work consists of demolition and disposal of 23 buildings and asbestos abatement of steam tunnels (See Figures 1 and 4).

Building demolition reduces environmental clean-up costs for removal of impacted soils beneath building foundations.

Demolition includes:

- Buildings 37, 38, 42, 82, 100, 138, 139, 175, 180, 186, 190, 195, 196, 197, 198, 199, 216, 230 (original list of 18)
- Buildings 20 (north wing), 39, 36, 62, and 156
(20 Feb 02 review of TRRP Residential Remedy Standard A groundwater and soil maps)
- Abatement of asbestos lagging and removal of steam pipes.

BUILDING DEMOLITION

PROPOSED ACTION

Building demolition includes asbestos and lead based paint abatement, demolition, and off-site disposal of building debris.

Steam tunnel work includes removal of the steam piping, insulation (supply and return lines), and residual asbestos. The tunnels will remain in place after abatement.

PERMITS/APPROVALS

Landfill disposal profile and disposal approval. Texas Department of Health Permit for asbestos and lead-based paint abatement.

SOIL REMOVAL ACTIONS

SITE DESCRIPTION:

This grouping of areas requiring further action consist of sites to be addressed by source area removals involving shallow soil contamination at the following sites (see Figure 1):

- DRMO Soils - Metals (SWMU 86 and Site K)
- Category A soils - Site Q (SWMU 80P)
- Category A soils - Site P (Building 800/Control Tower)
- Category A soils - Helicopter Site
- Category D soils - (SWMUs 17P, 18P, and 21P)
- Category D soils - Site M
- Category D soils - Sites O and area north
- Building 38 (Site A, SWMU 36P)
- Category E - Site H (Fire Fighter Training Area / SWMU 6P)
- Public Works Area (SWMU 83)

SUMMARY OF CONTAMINANTS :

Shallow soil contaminants consist of SVOCs, pesticides, and metals.

SOIL REMOVAL ACTIONS

<i>REMEDY STANDARD</i>	TRRP Residential Remedy Standard A
<i>PROPOSED REMEDY</i>	Excavation and off-site disposal of impacted soils.
<i>PERMITS/APPROVALS</i>	Landfill disposal profile and disposal approval.

MAIN FUEL FARM (SWMU 136P)



SITE DESCRIPTION:

The Main Fuel Farm is located on the northeast side of NAS Dallas. Five former jet fuel USTs, two waste oil USTs, and three buried, steel fuel storage tanks and nine dry wells, formerly used for disposal of liquid wastes, were located in the Main Fuel Farm Compound. The Main Fuel Farm tanks and dry wells were removed from the site in the late 1990s.

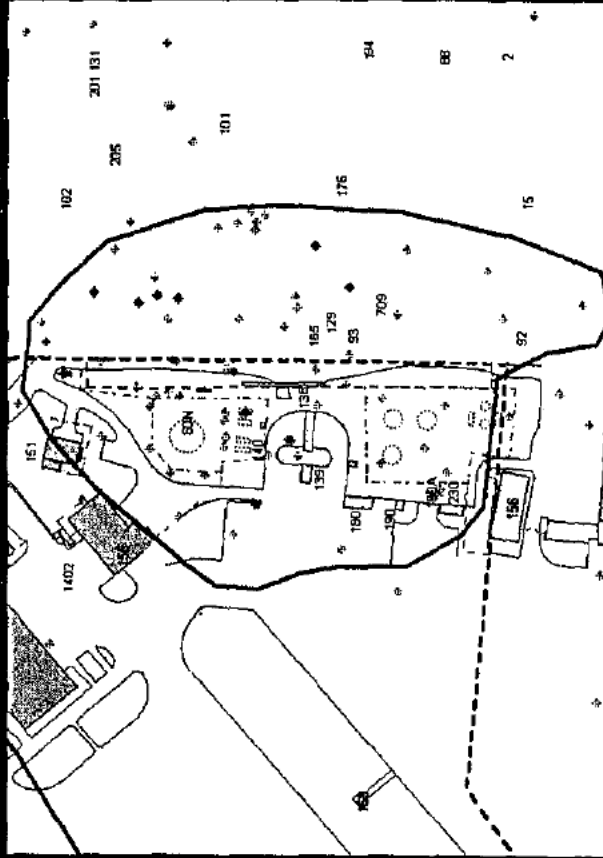
SUMMARY OF CONTAMINANTS :

Soil contaminants consist of VOCs, SVOCs and metals.
Groundwater contaminants consist of petroleum hydrocarbons and chlorinated VOCs.

MAIN FUEL FARM (SWMU 136P)



Soil Exceedance Map

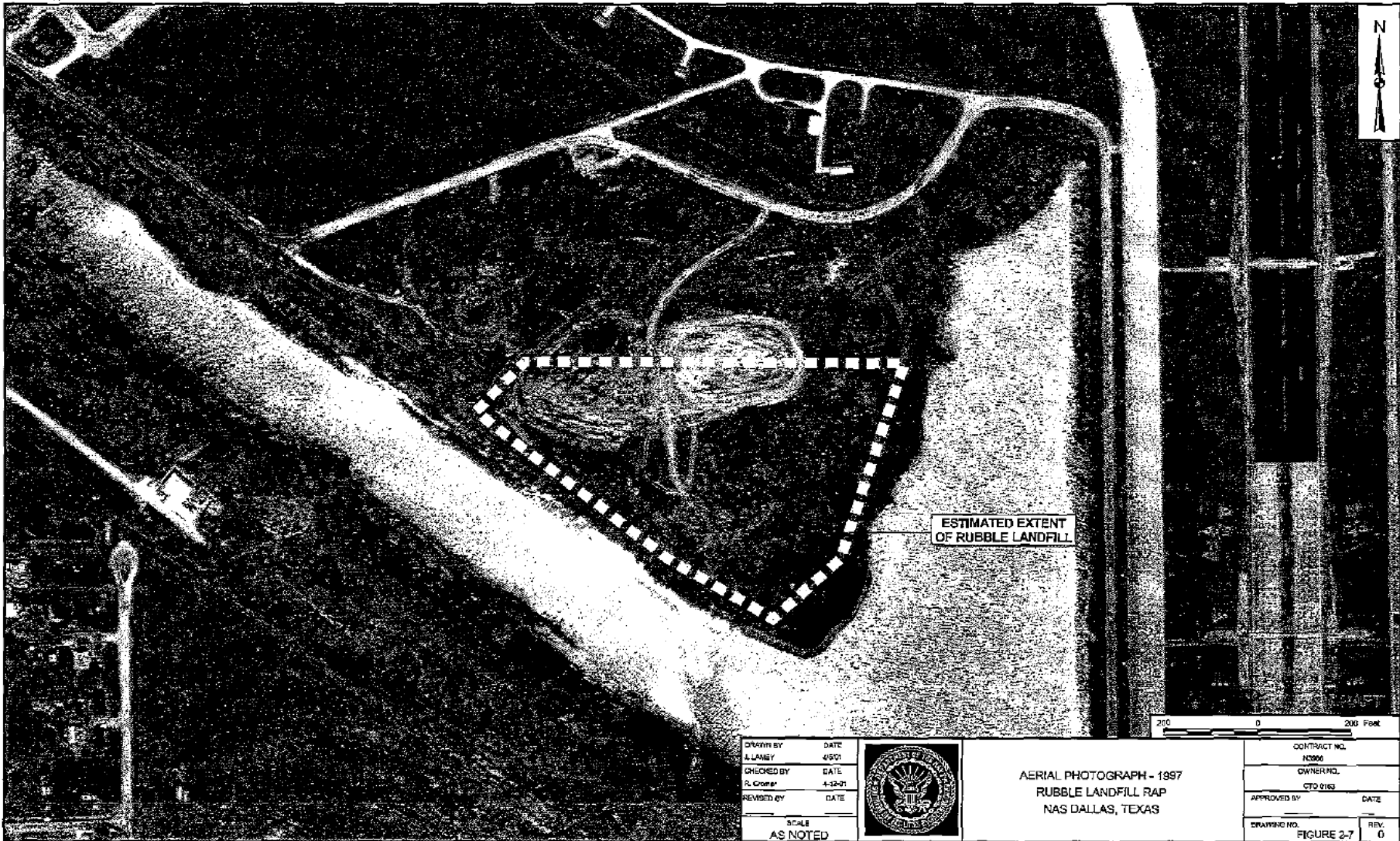


Groundwater Exceedance Map

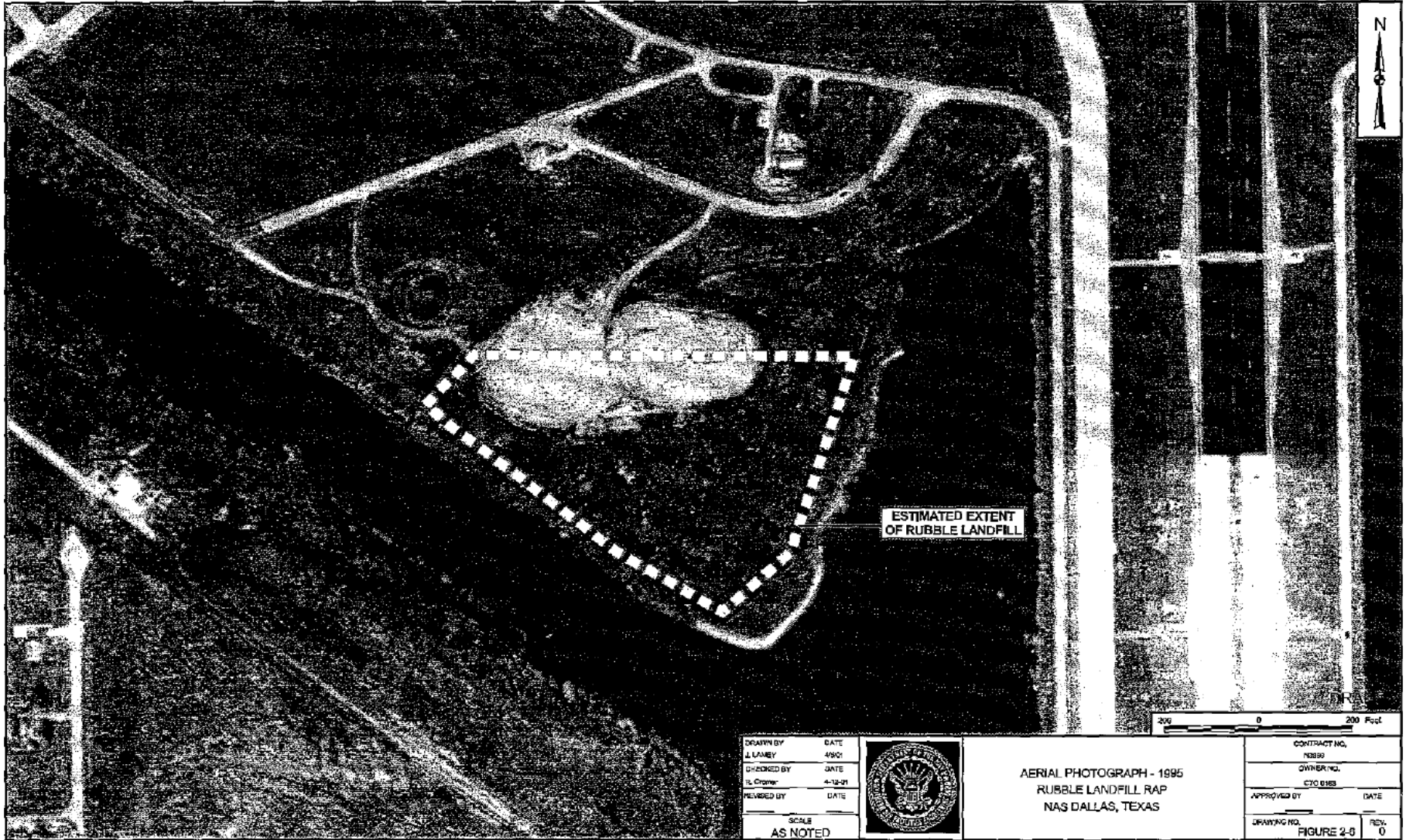
Notes:

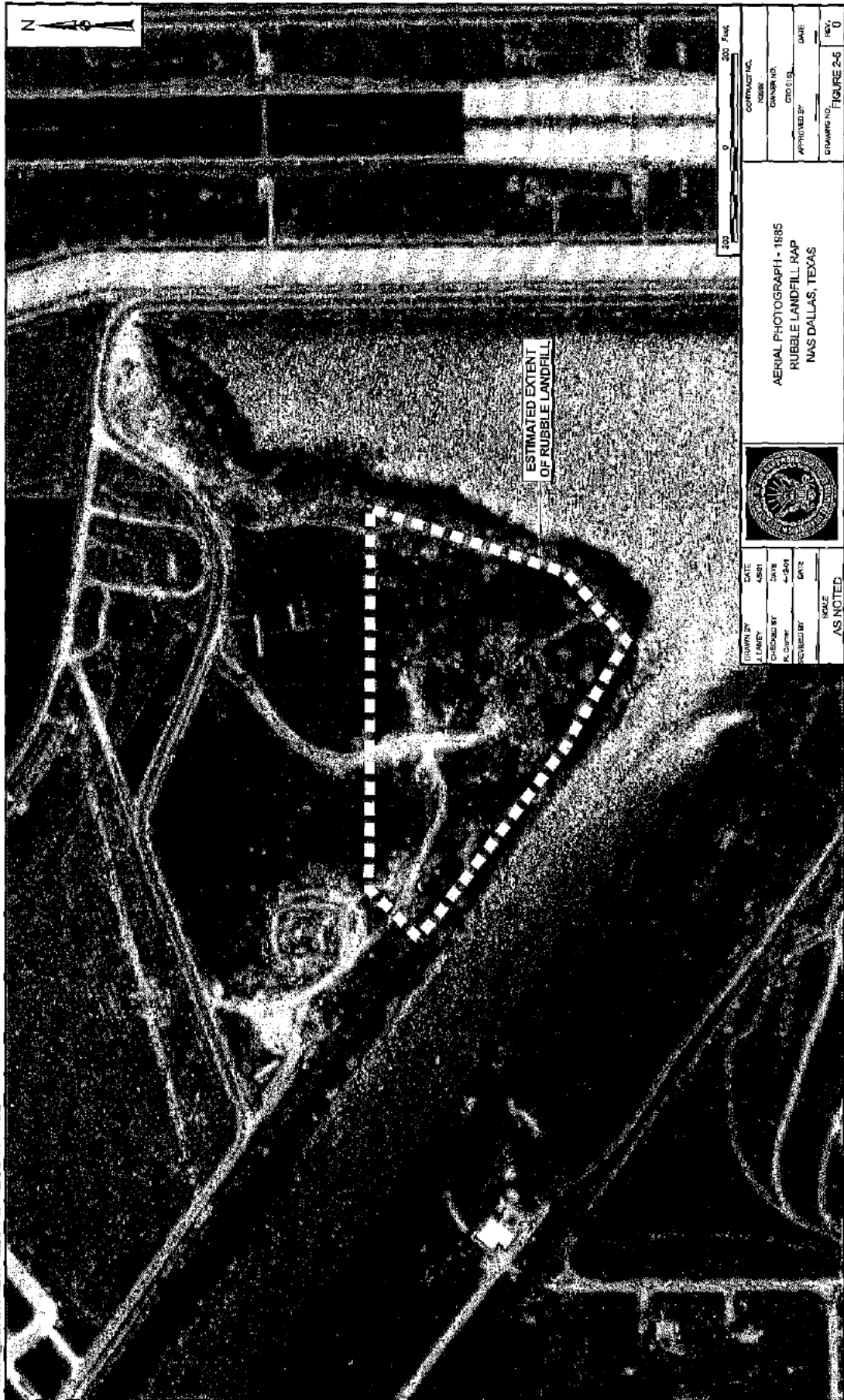
- (1) Yellow building color indicates building for demolition. Green building color indicates building for asbestos or lead-based paint abatement.
- (2) Red color or symbol indicates exceedance of TRRP Residential Remedy Standard A. Grey symbol indicates location below TRRP Residential Remedy Standard A.

PAGISNAS_DALLASRAPRILANDFILLAPR 1997 AERIAL 4/10/01 JAL

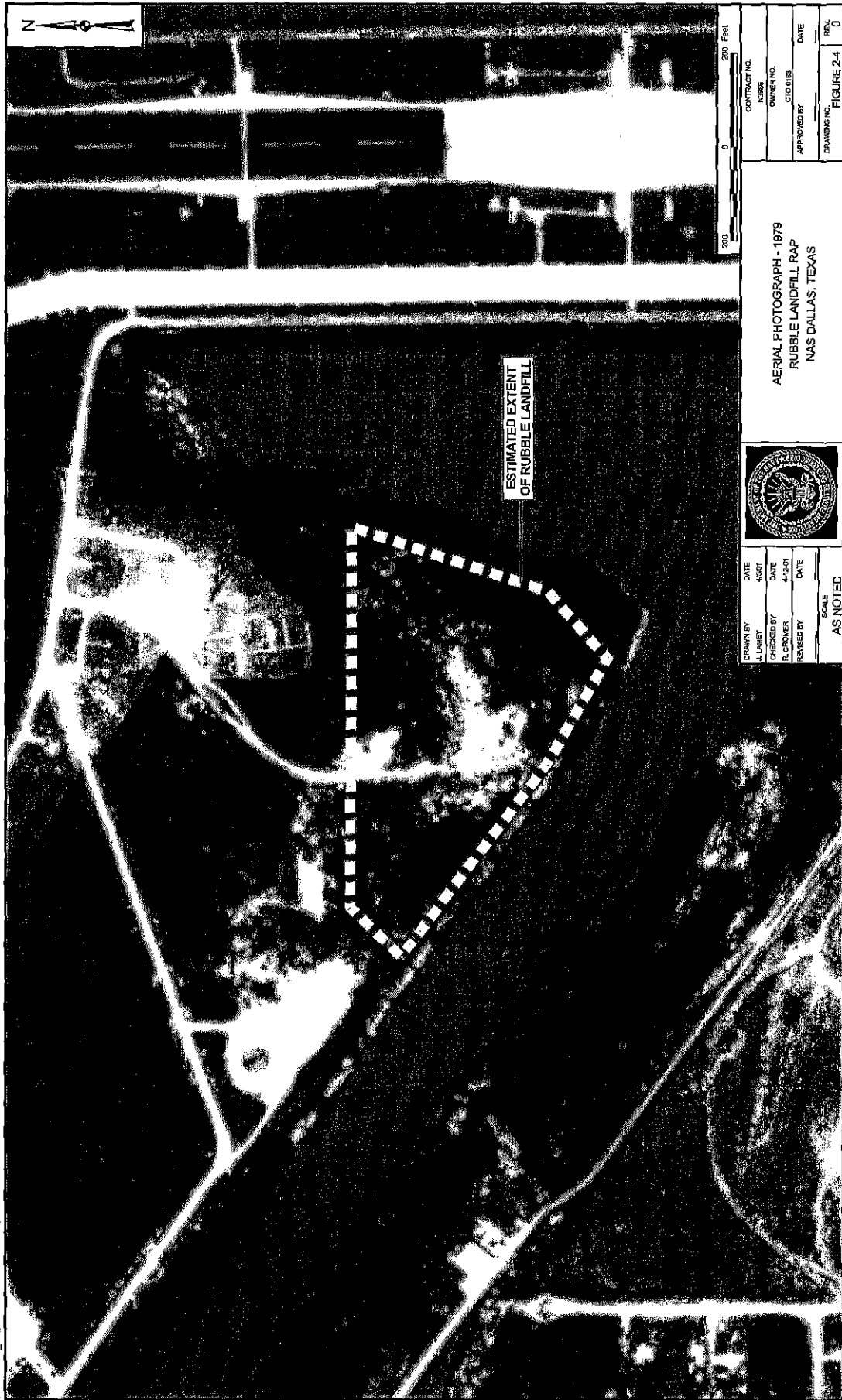


PAGISINAS, DALLAS/RUBBLELANDFILL APR 1985 AERIAL 4/10/01 JAL

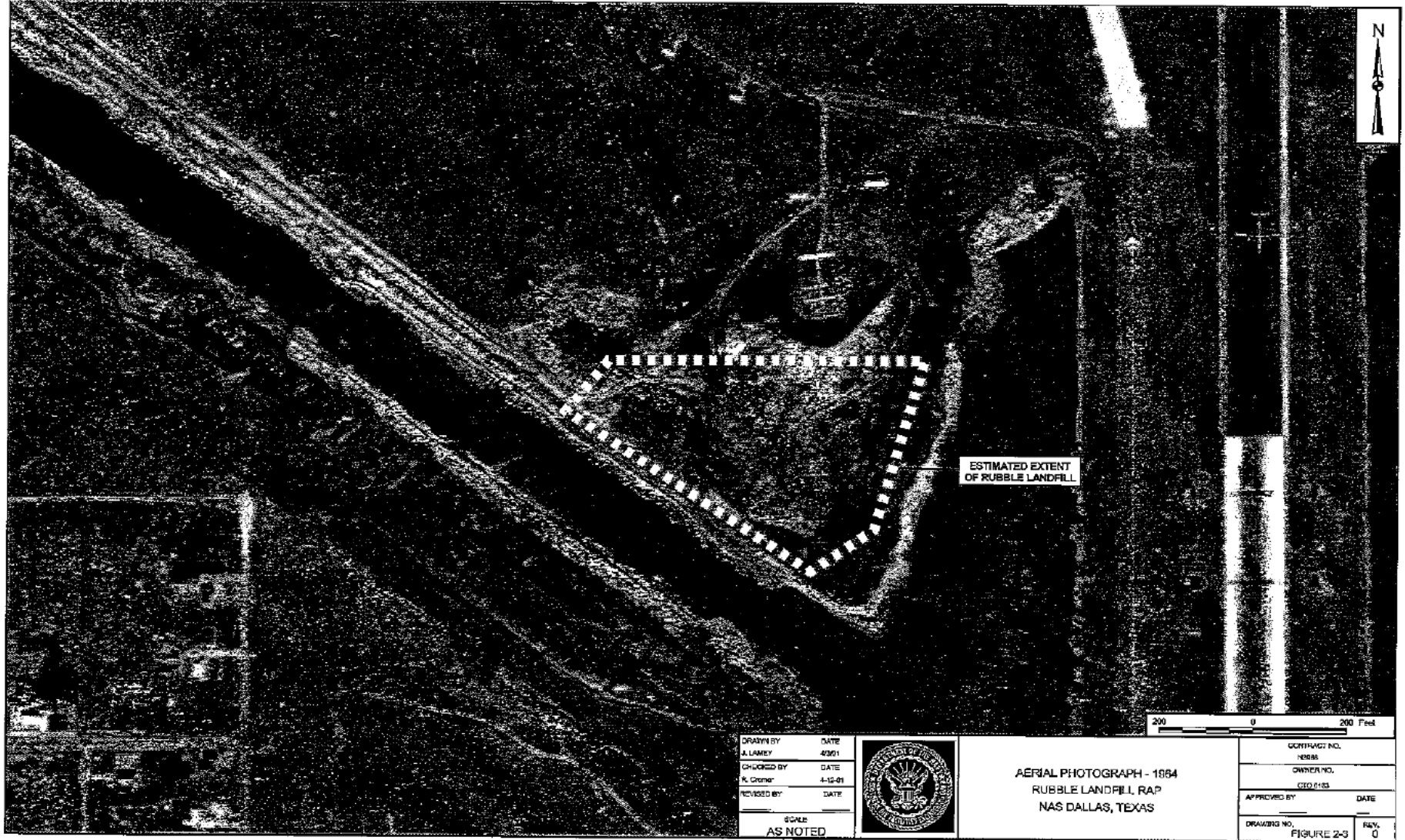




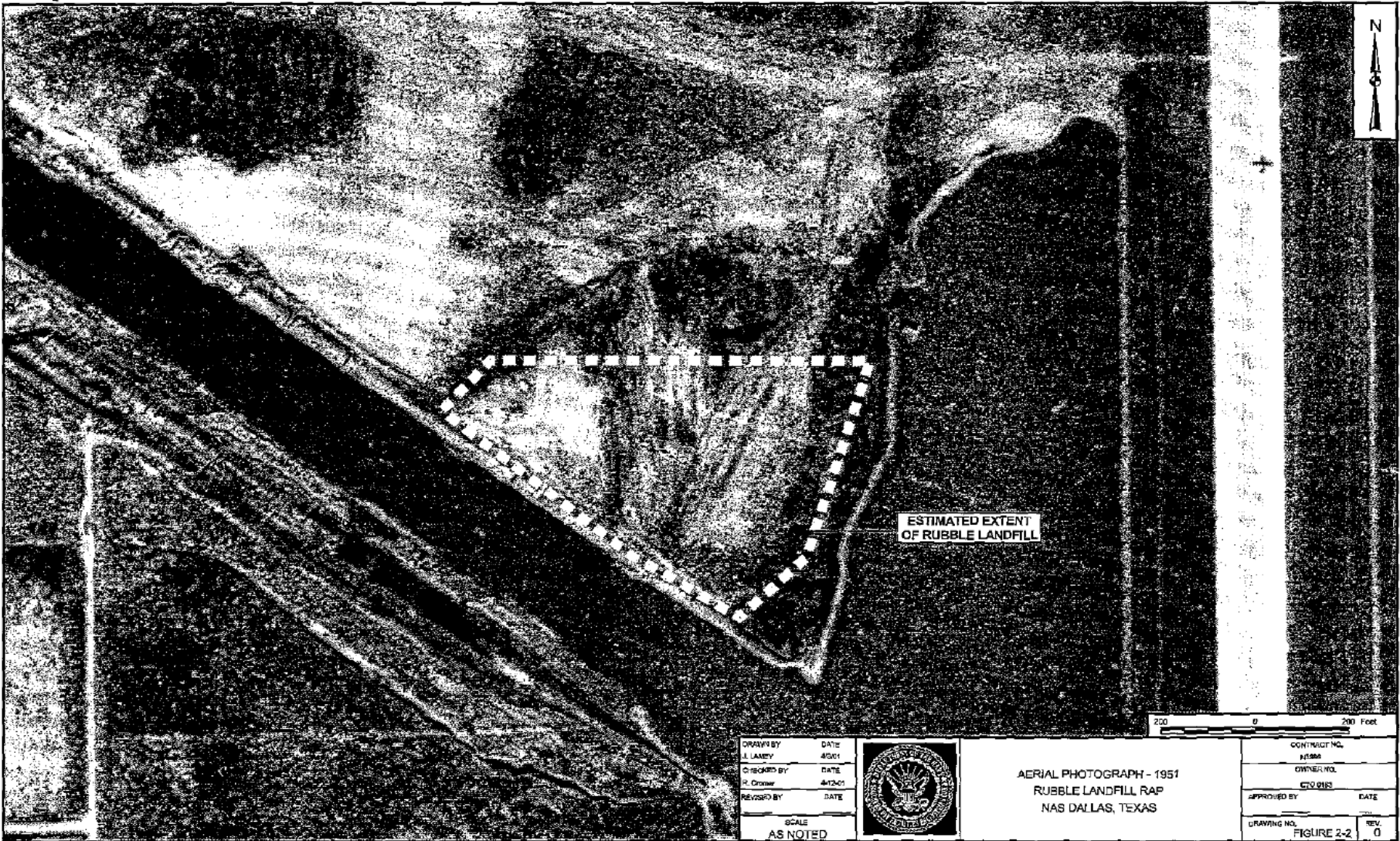
PICISINAS DALLASPERLANDFILL.APR. 1979.AERIAL. 4/10/01.JAL



FIGISINAS_DALLASRAPRILANDFILL.APR 1984 AERIAL 4/13/01 MGS



PHGISNAS_DALLASWPRLANDFILLAPR 1951 AERIAL 4/10/01 JAL



RUBBLE LANDFILL (SWMU 1P)

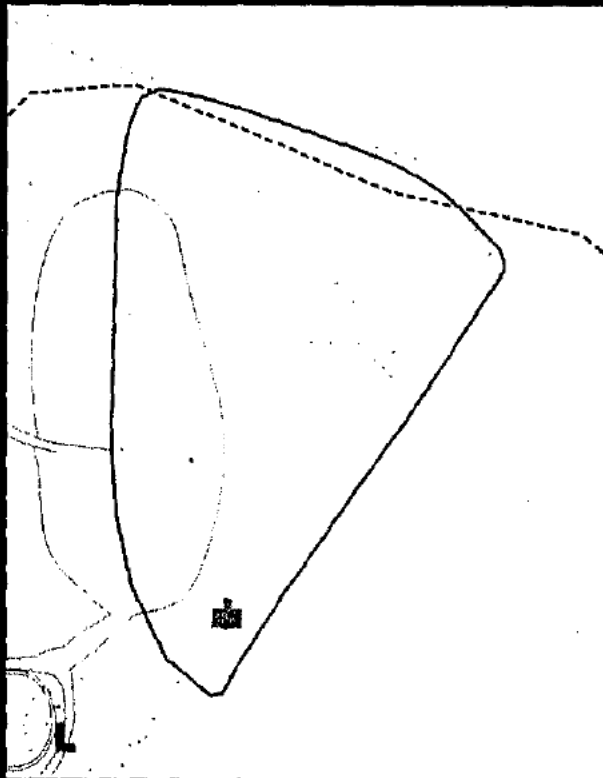
SITE DESCRIPTION: The Rubble Landfill is an area of approximately 6 acres and received materials such as construction debris, scrap metal, lumber, empty drums, power poles, and fill material.



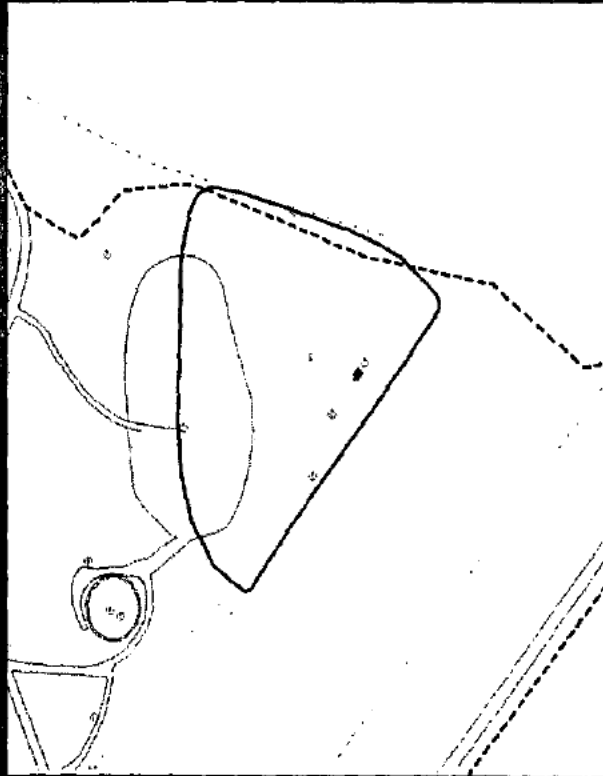
SUMMARY OF CONTAMINANTS :

Soil contaminants consist of metals and groundwater contaminants consist of a localized plume of chlorinated VOCs.

RUBBLE LANDFILL (SWMU 1P)



Soil Exceedance Map



Groundwater Exceedance Map

Notes:

- (1) Yellow building color indicates building for demolition. Green building color indicates building for asbestos or lead-based paint abatement.
- (2) Red color or symbol indicates exceedance of TRRP Residential Remedy Standard A. Grey symbol indicates location below TRRP Residential Remedy Standard A.

RUBBLE LANDFILL (SWMU 1P)

REMEDY STANDARD

TRRP Residential Remedy Standard A

REMEDY

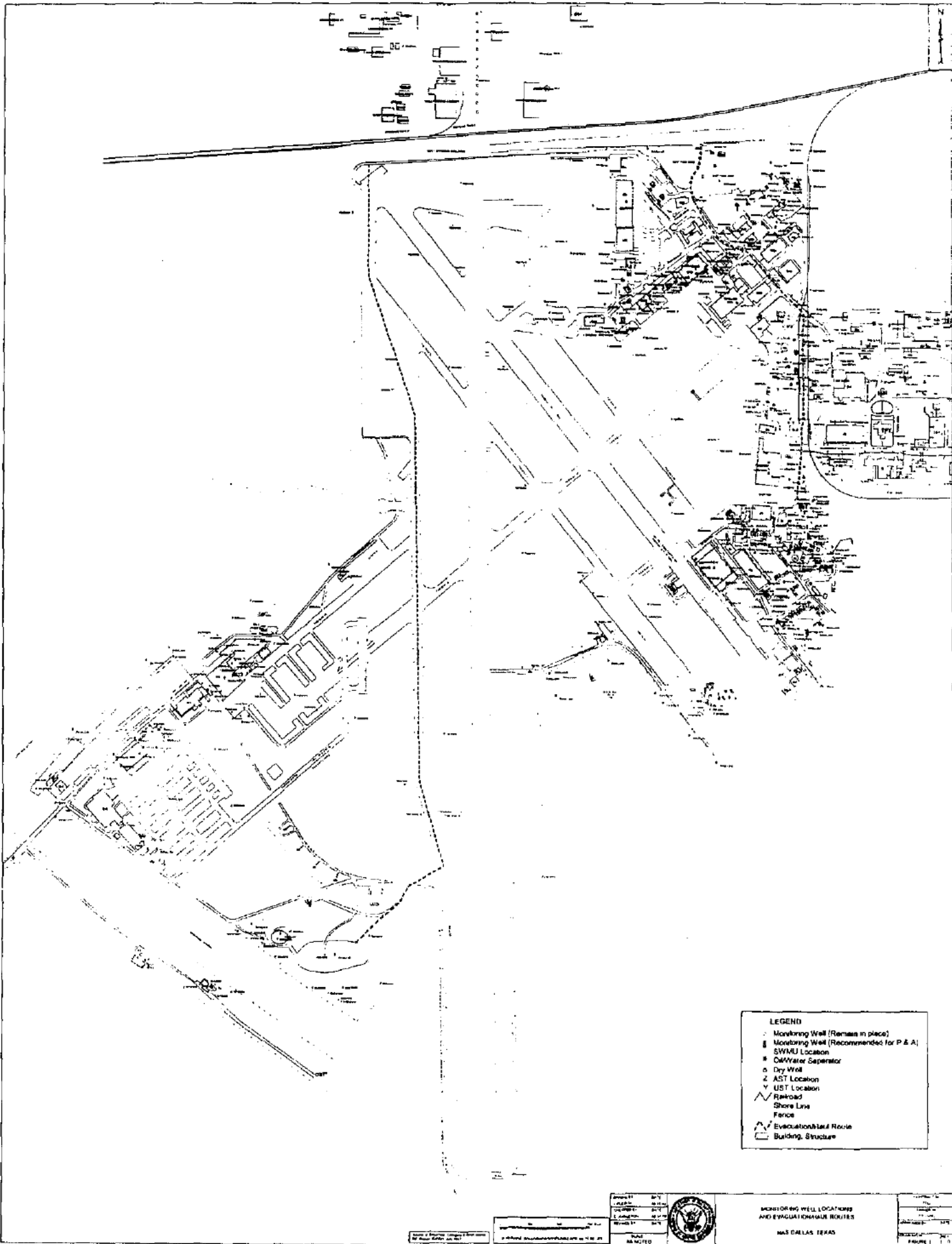
Excavation and off-site disposal of construction and demolition debris, impacted soil, and groundwater. Non-impacted soil to be used as fill.

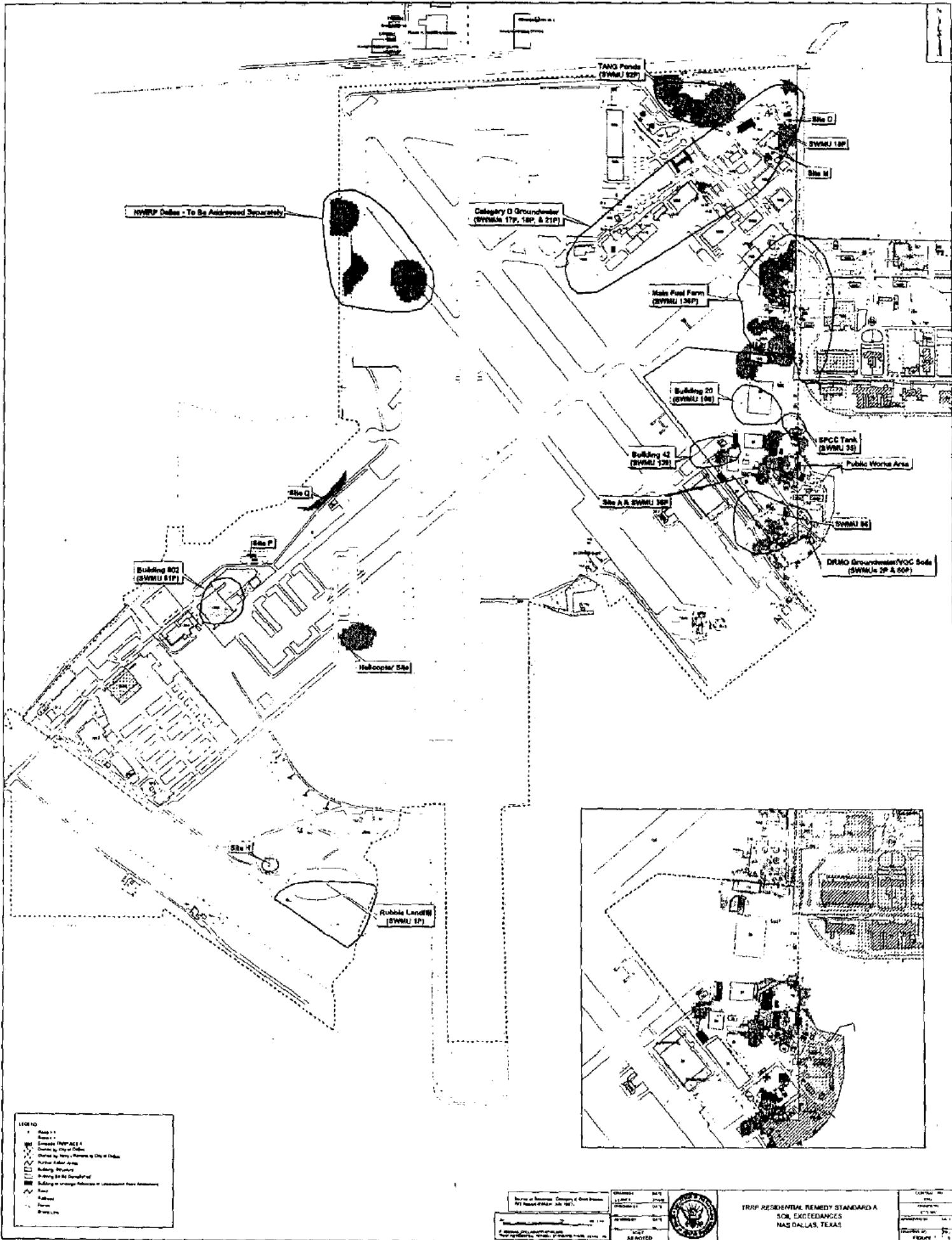
PERMITS/APPROVALS

Landfill disposal profile and disposal approval.

SCHEDULE EXECUTION NEEDS

- Lay-down Areas
- Haul Routes
- Site Access and Work Hours
- Office and Storage Facilities
- Permits
- On-board review of Work Plans
- Use of Buildings 20 and 21 for LTTD work





Activity ID	Activity Description	2002	2003	2004	2005	2006
+ DRMO Groundwater/VOC soils (SWMU 2P & 60P)		[Redacted]				
+ Building 42 (SWMU 139)		[Redacted]				
+ TANG Ponds (SWMU 92P)		[Redacted]				
+ Rubble Landfill (SWMU 1P)		[Redacted]				
+ Main Fuel Pans (SWMU 134P)		[Redacted]				
+ Category D Groundwater (SWMUs 17P, 18P, & 21P)		[Redacted]				
+ Building Demolition		[Redacted]				
+ Building 20 (SWMU 108)		[Redacted]				
+ Soil Removal Action (10 Areas)		[Redacted]				
+ Groundwater Removal Actions		[Redacted]				
+ Asbestos and Lead Based Paint Abatement		[Redacted]				

Start Date 20NOV00
 Finish Date 25JUN18
 Date Date 15FEB02
 Run Date 20-EB02 12:43

Early Bar
 Progress Bar
 Critical Activity

DRAFT
 Naval Air Station
 Dallas, Texas
 Through June 2006

Sheet 1 of 1



Activity ID	Activity Description	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	
+ DRMO Groundwater/VOC soils (SWMU 2P & 60P)		△	◆◆	◆◆◆	◆◆◆◆	◆◆◆◆◆	◆◆◆◆◆◆	◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆	◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆
+ Building 4Z (SWMU 139)		[Redacted]																	
+ TANG Ponds (SWMU 92P)		[Redacted]																	
+ Rubble Landfill (SWMU 1P)		[Redacted]																	
+ Main Fuel Farm (SWMU 136P)		[Redacted]																	
+ Category D Groundwater (SWMUs 17P, 18P, & 21P)		[Redacted]																	
+ Building Demolition		[Redacted]																	
+ Building 20 (SWMU 188)		[Redacted]																	
+ Soil Removal Action (10 Areas)		[Redacted]																	
+ Groundwater Removal Actions		[Redacted]																	
+ Asbestos and Lead Based Paint Abatement		[Redacted]																	

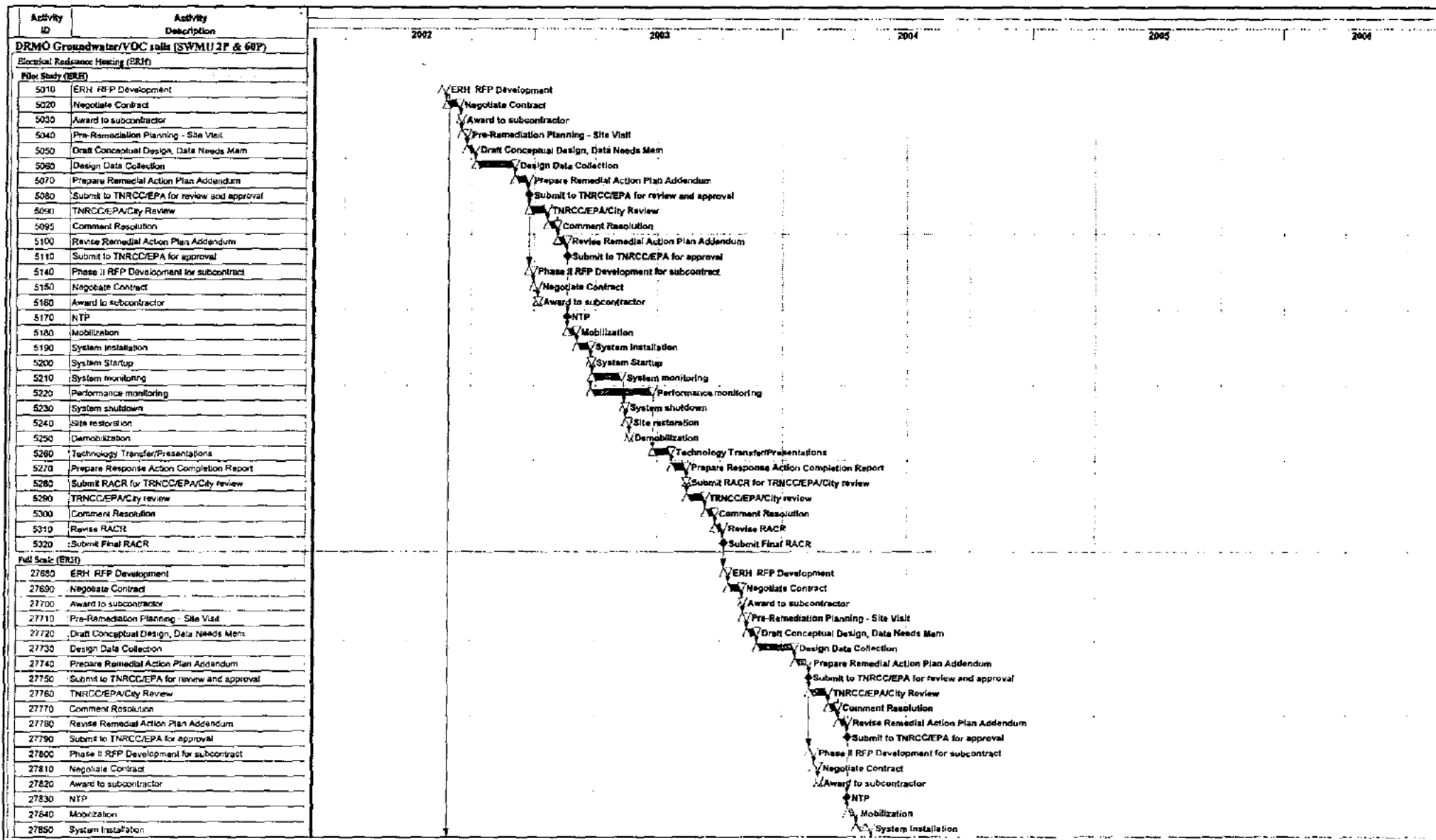
Start Date: 20NOV00
 Finish Date: 29JUN16
 Data Date: 15FEB02
 Run Date: 20FEB02 12:40

Legend:
 [Redacted] Early Bar
 [Redacted] Progress Bar
 [Redacted] Critical Activity

DRAFT
 Naval Air Station
 Dallas, Texas
 Through July 2018

Sheet 1 of 1





Start Date: 20NOV00
 Finish Date: 26JUN06
 Data Date: 15FEB02
 Run Date: 20FEB02 13:03

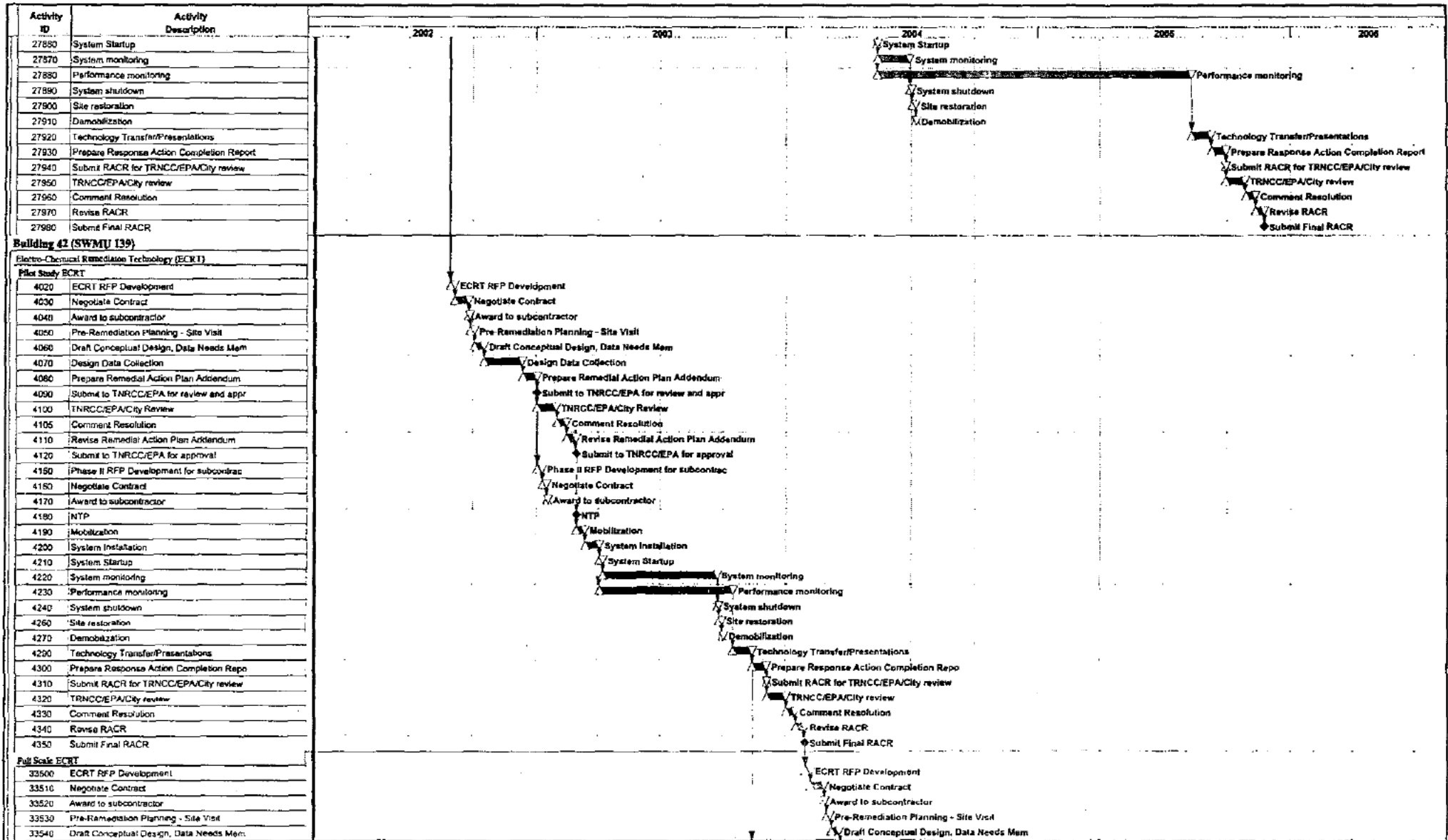
Legend:
 [Bar] Early Bar
 [Bar] Progress Bar
 [Bar] Critical Activity

© Primavera Systems, Inc.

DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

Sheet 1 of 16





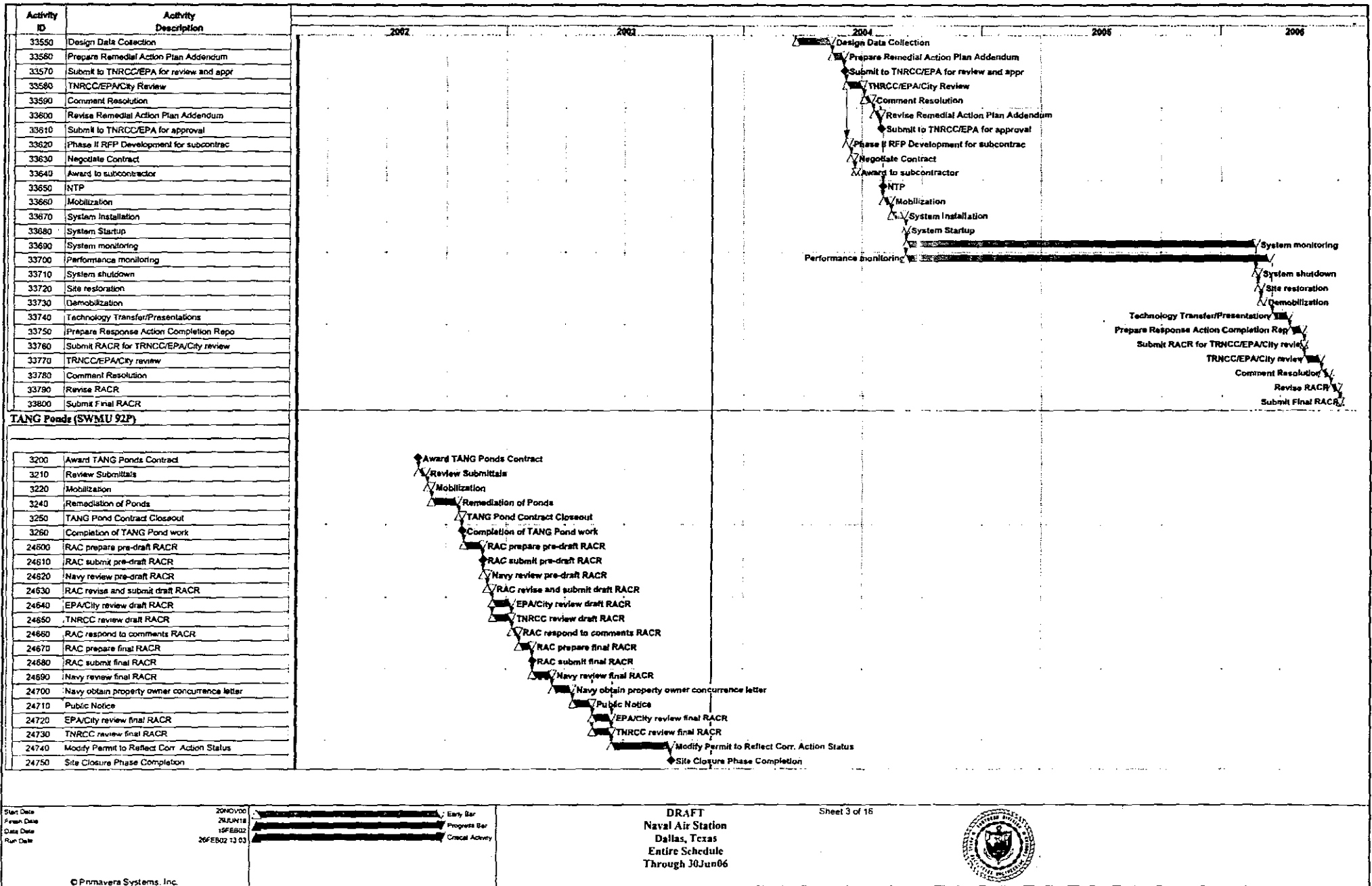
Start Date: 20NOV00
 Finish Date: 28JAN18
 Data Date: 19FEB02
 Run Date: 28FEB02 13:03

Early Bar
 Progress Bar
 Critical Activity

DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

Sheet 2 of 16





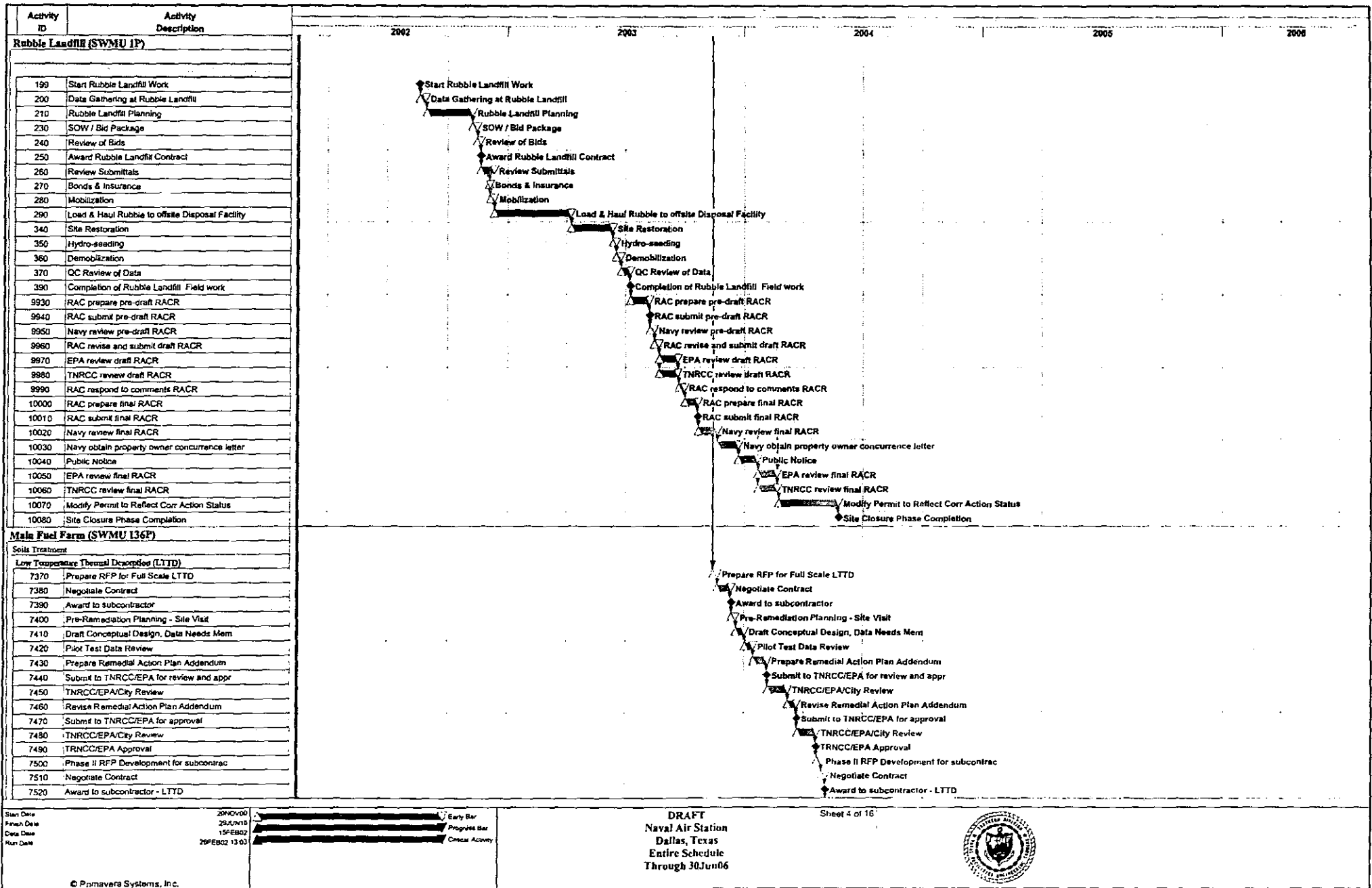
Start Date: 20NOV00
 Finish Date: 29JUN06
 Data Date: 19FEB02
 Run Date: 26FEB02 13:03

Legend:
 Early Bar
 Progress Bar
 Critical Activity

DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

Sheet 3 of 16





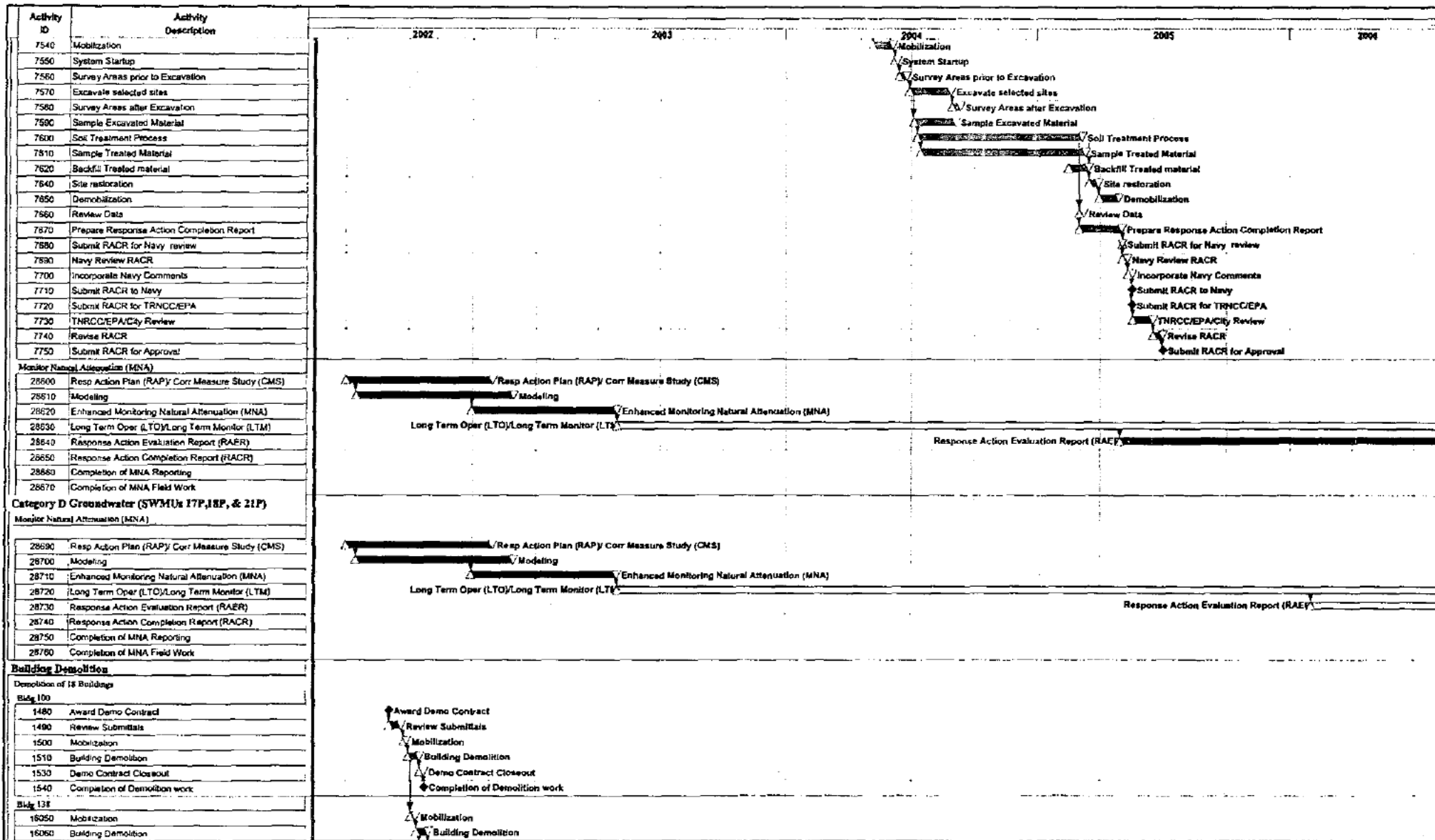
Start Date 20NOV00
 Finish Date 29JUN06
 Data Date 15FEB02
 Run Date 29FEB02 13:03

Early Bar
 Progress Bar
 Critical Activity

DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

Sheet 4 of 16



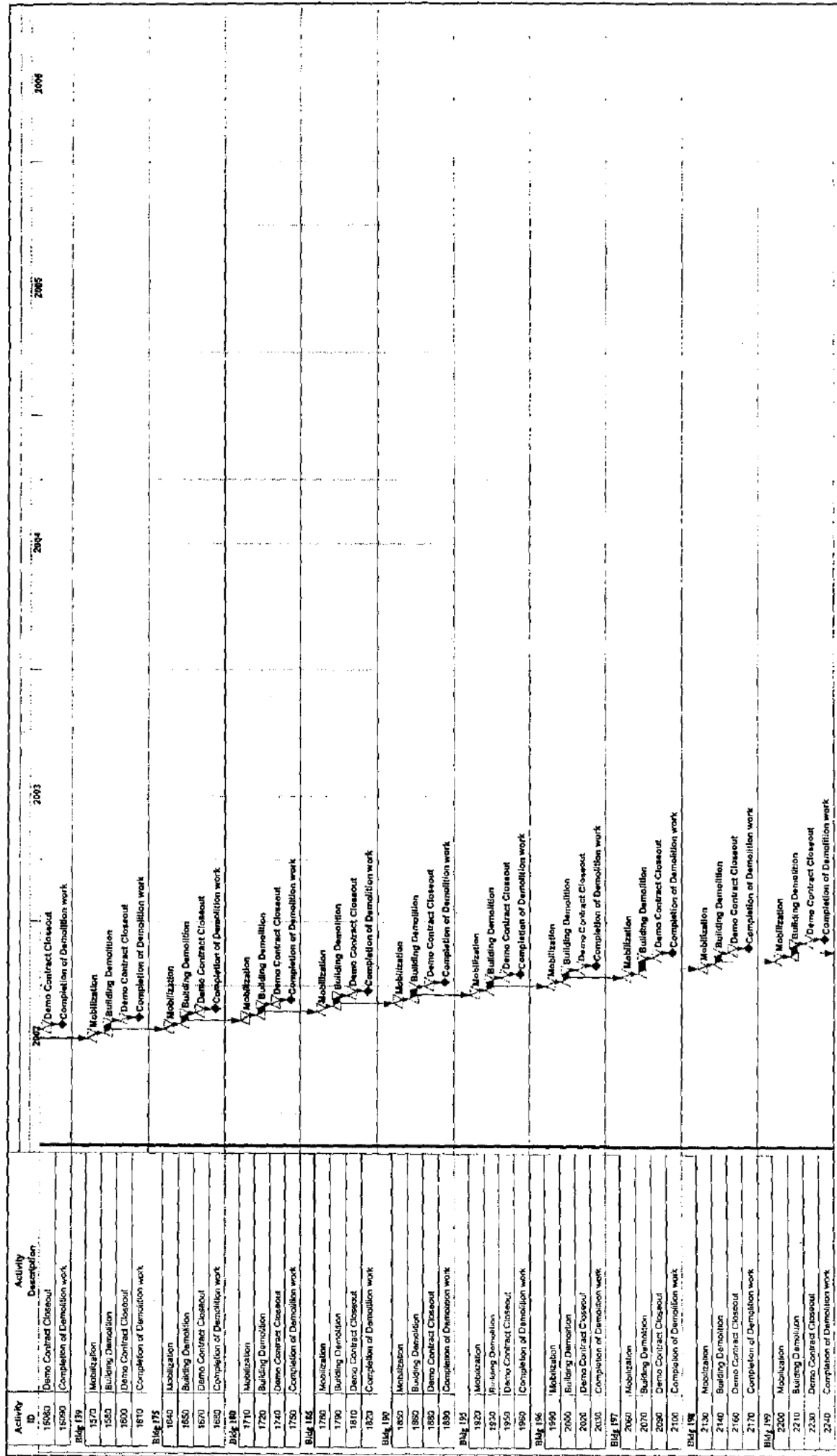


Start Date	20NDV00	Early Bar
Finish Date	29JUN18	Progress Bar
Draw Date	15FEB02	Critical Activity
Run Date	24FEB02 13:03	

DRAFT
Naval Air Station
Dallas, Texas
Entire Schedule
Through 30Jun06

Sheet 5 of 16





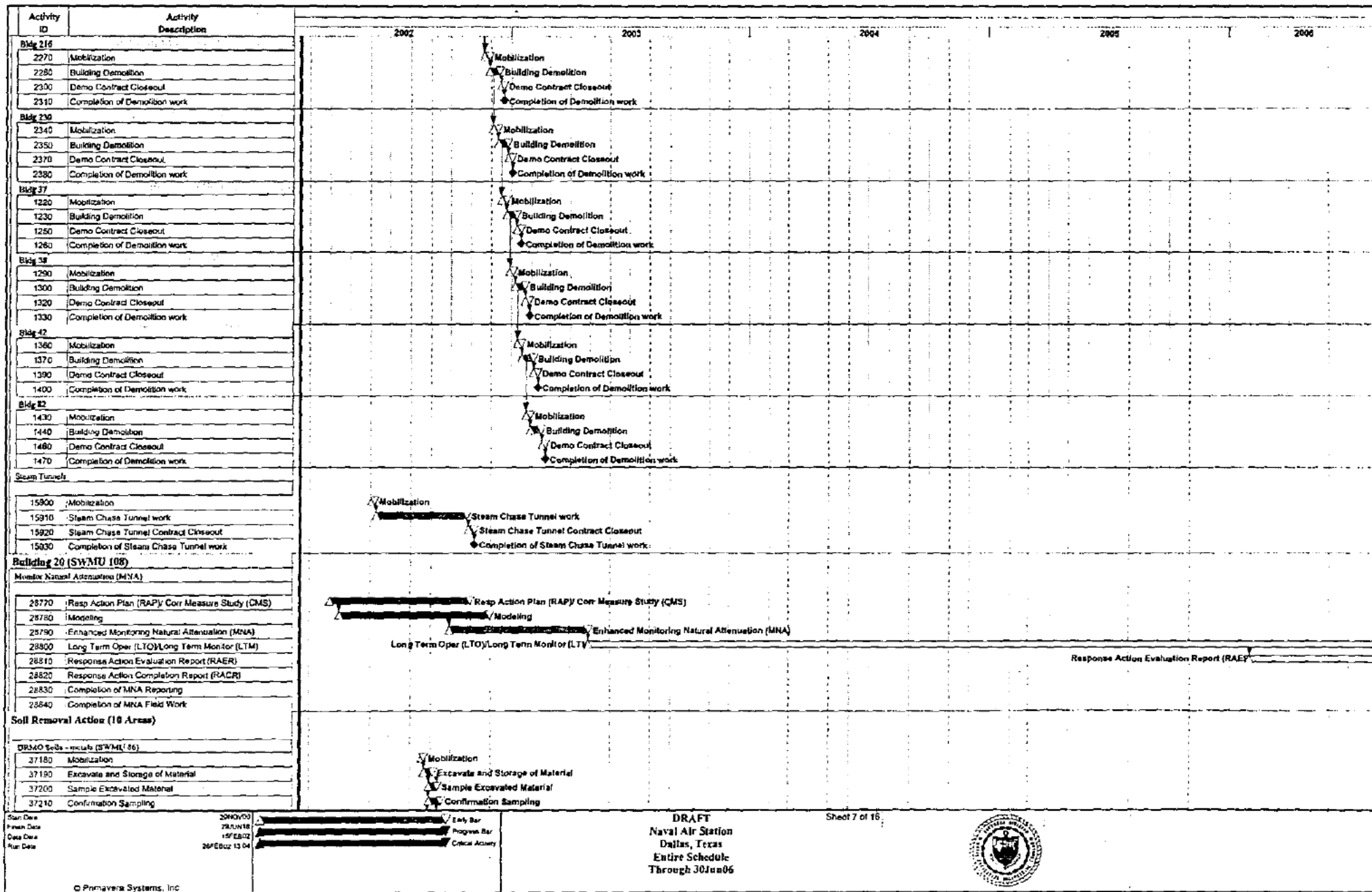
Sheet 6 of 16

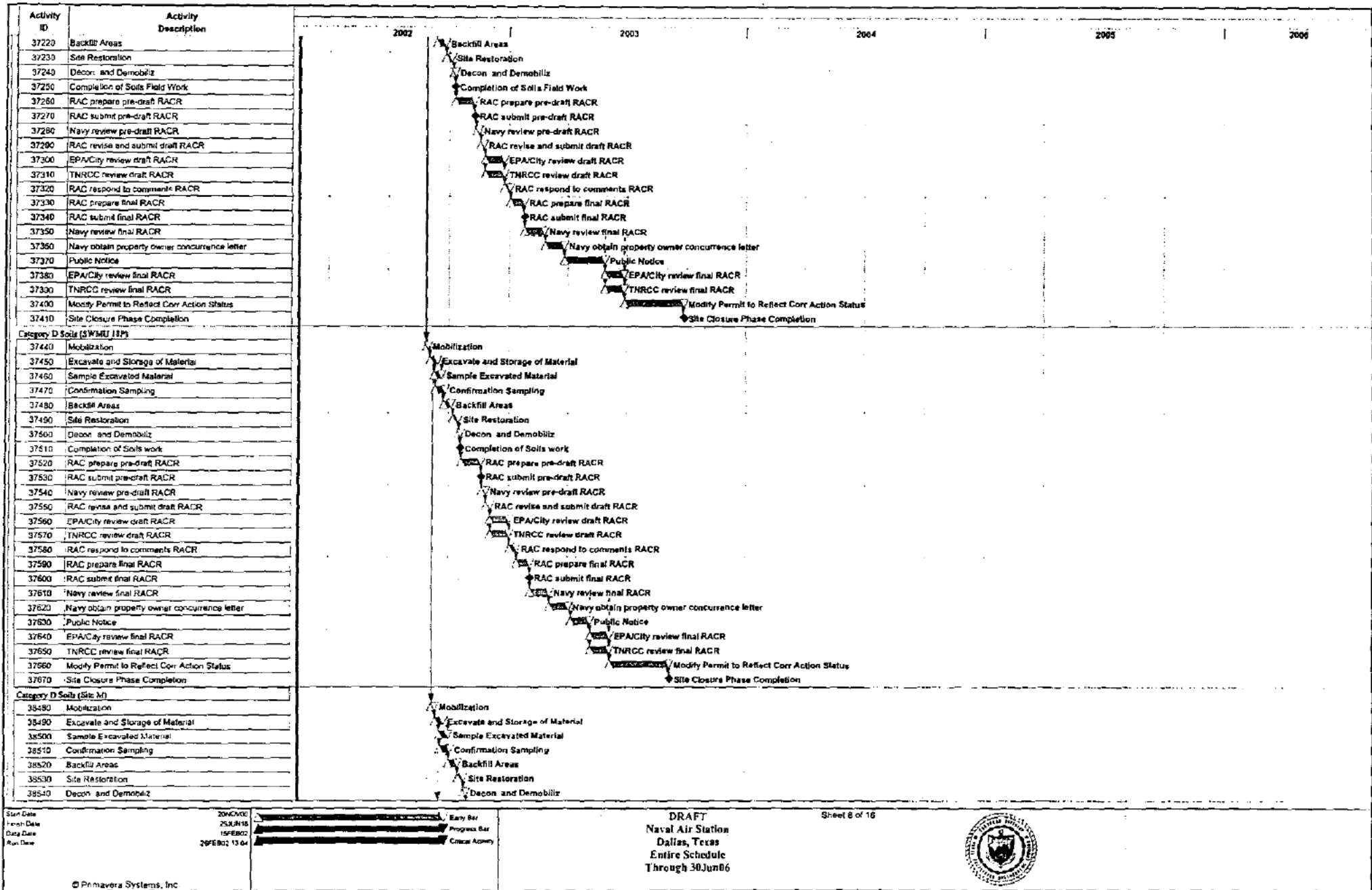
DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06



20060201
 25 JUL 06
 15F EHM
 39F EBM 13 04

Start Date
 End Date
 Due Date
 Run Date





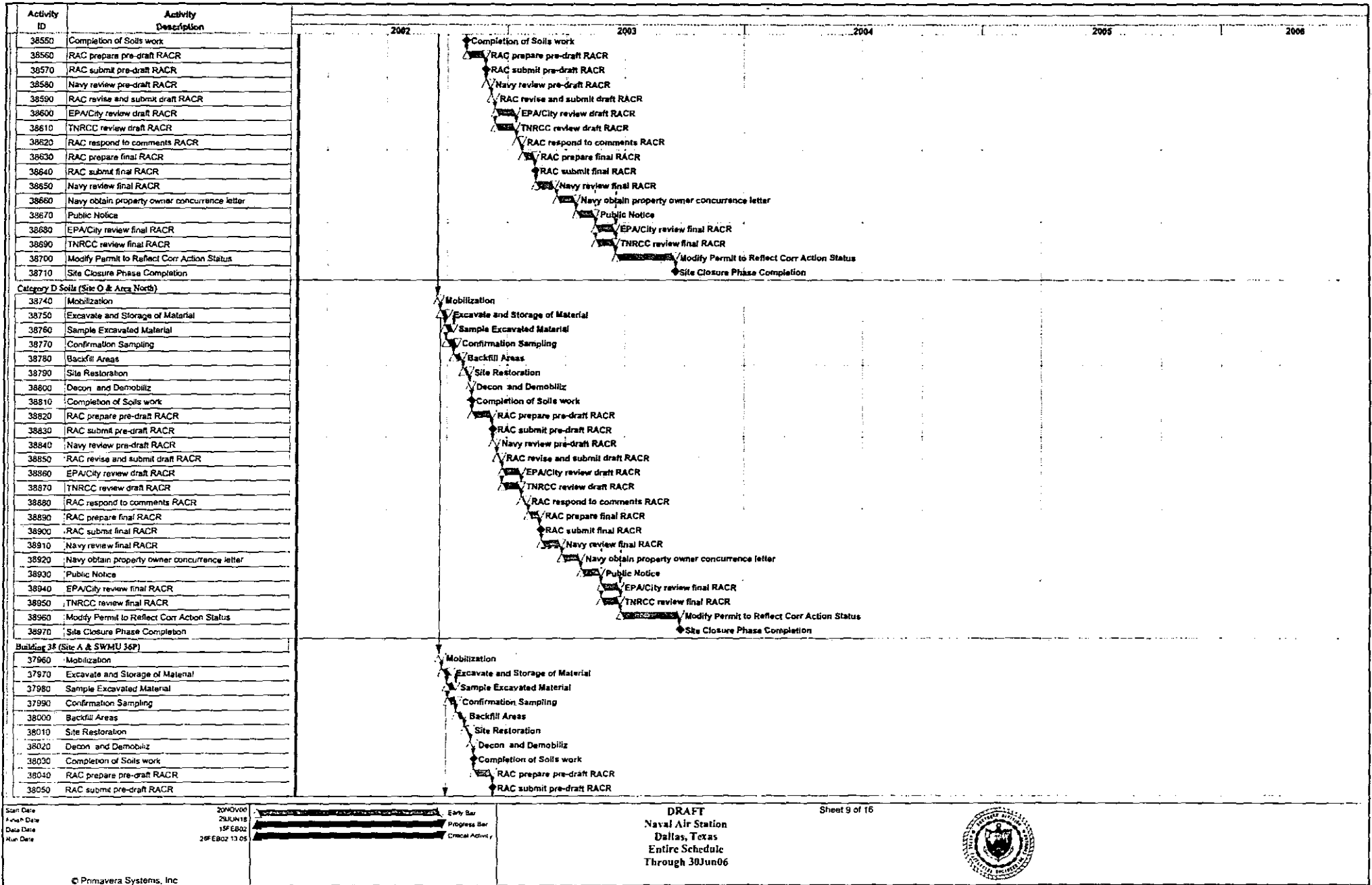
Start Date: 20ANC01
 Finish Date: 25JUN16
 Data Date: 15FEB02
 Run Date: 26FEB02 13:04

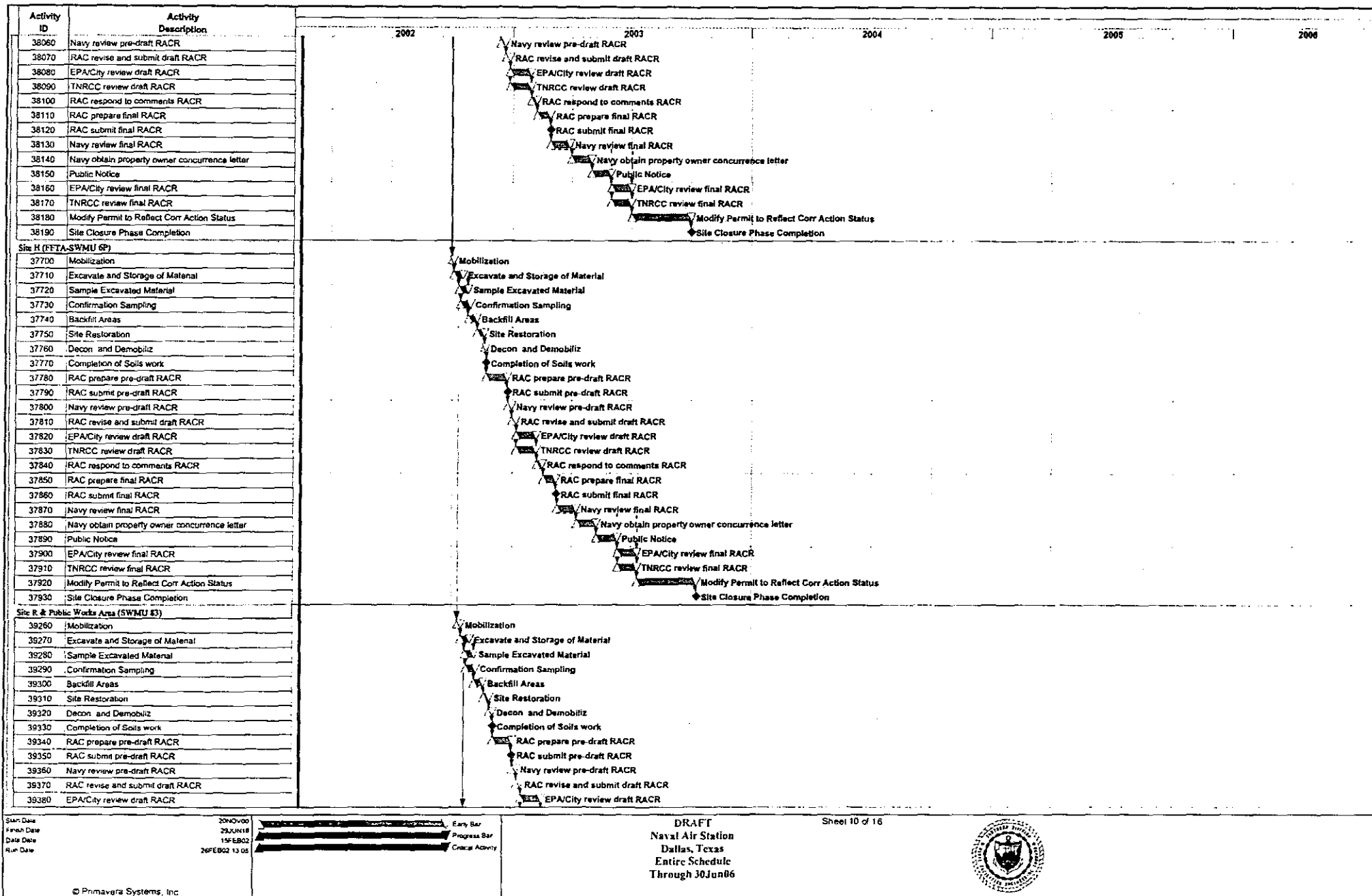
Early Bar
 Progress Bar
 Critical Activity

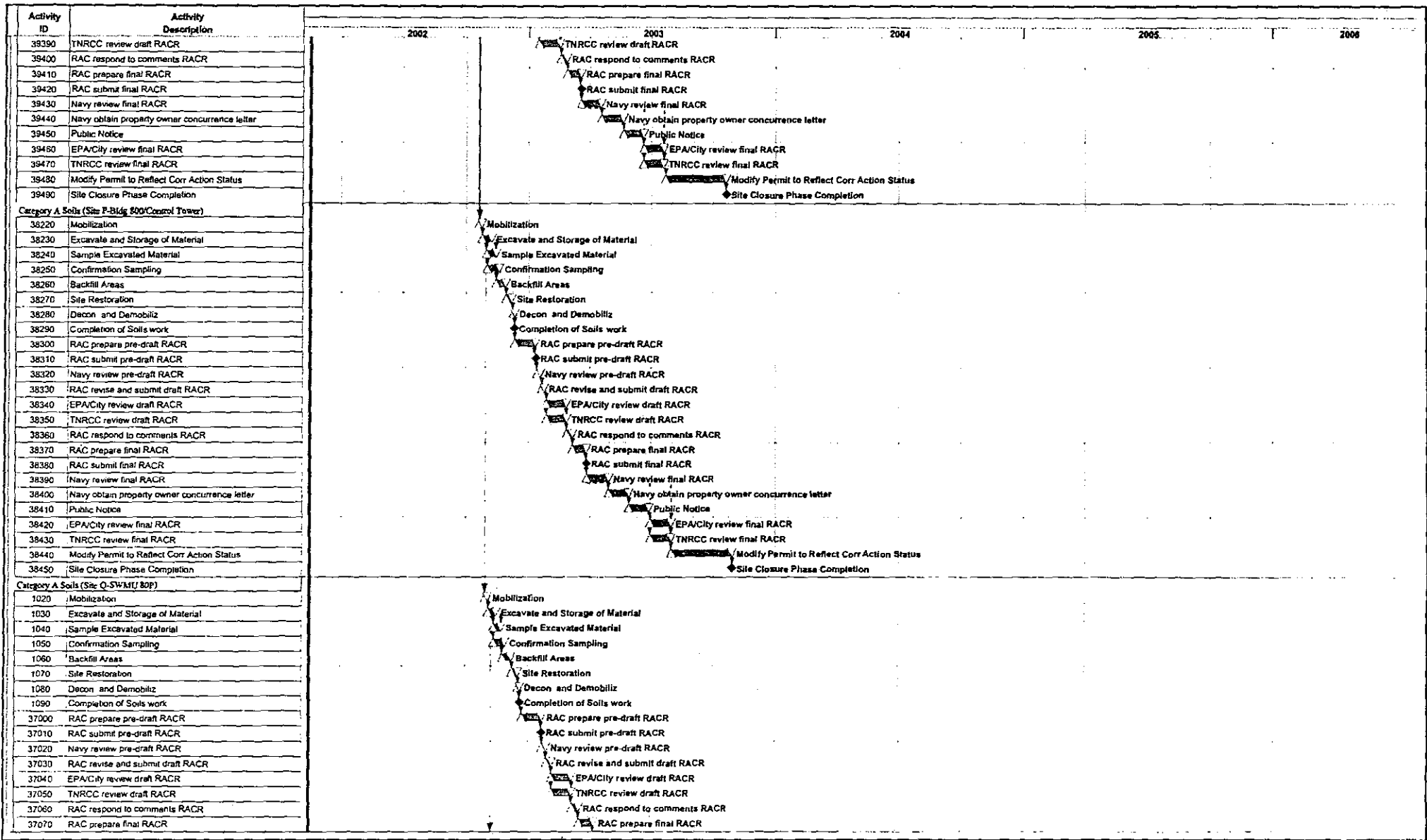
DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

Sheet 8 of 16

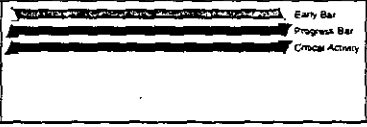








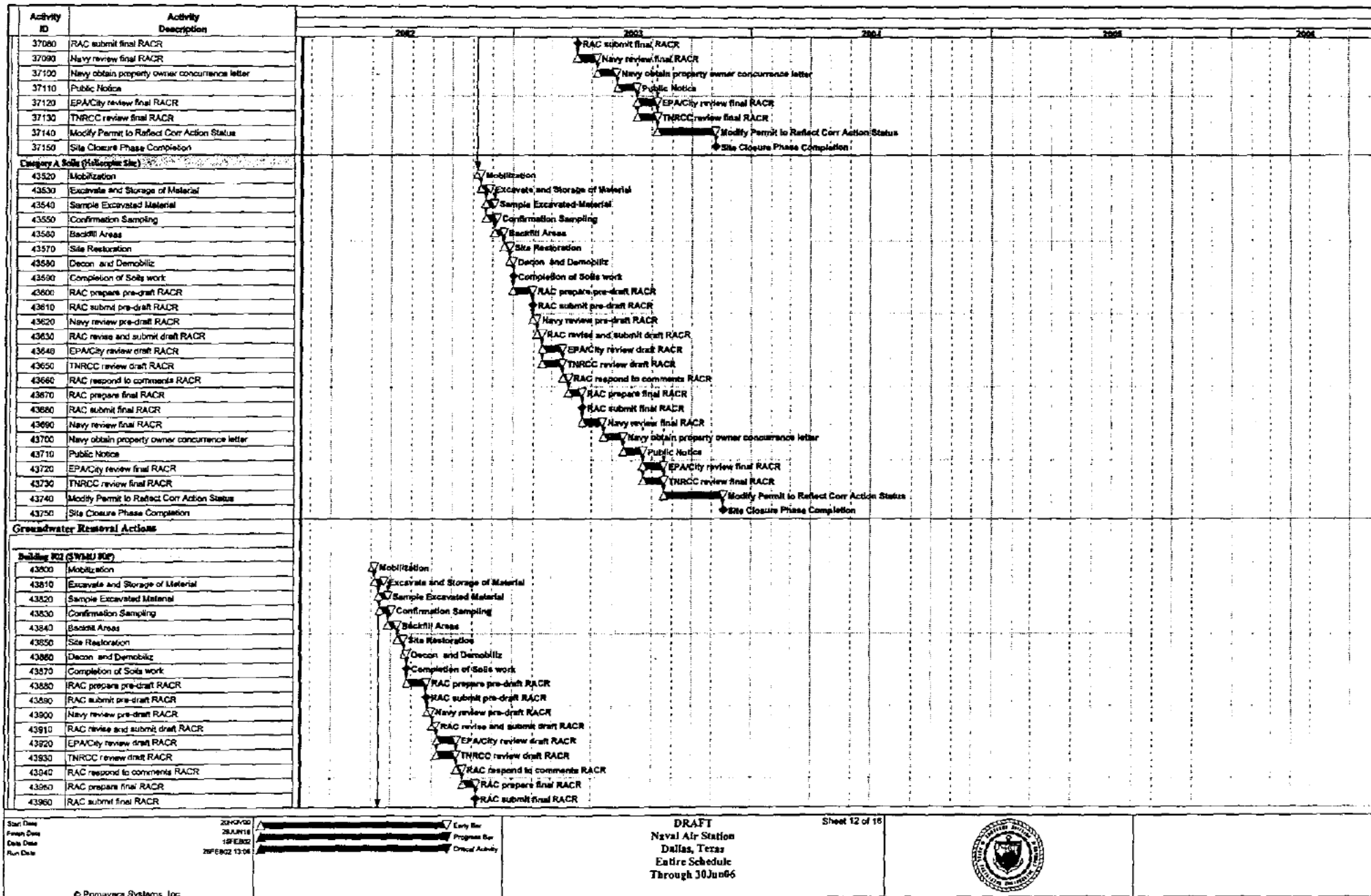
Start Date 20NOV00
 Finish Date 25JUN18
 Data Date 15FEB02
 Run Date 29FEB02 12:05



DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

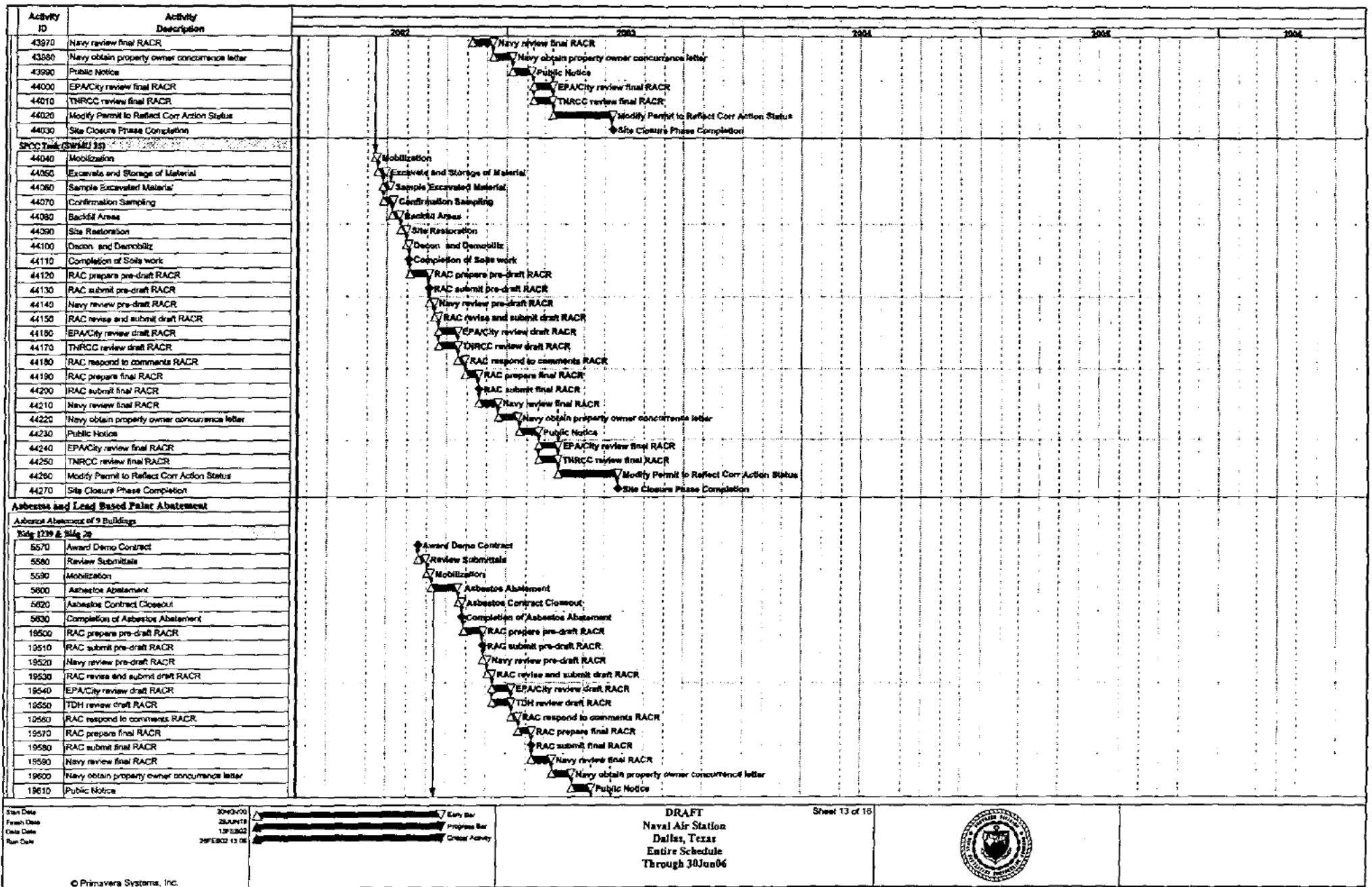
Sheet 11 of 16

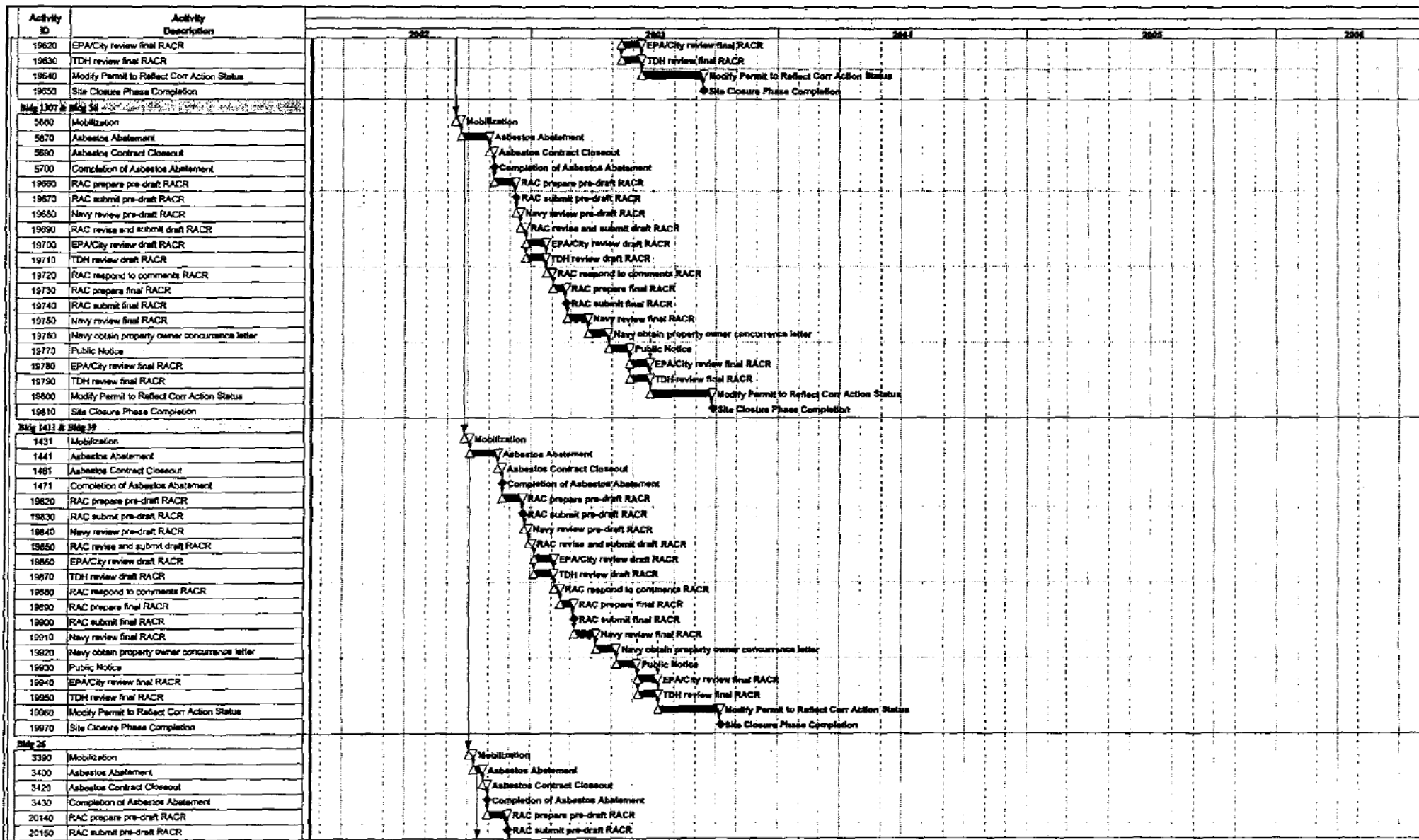




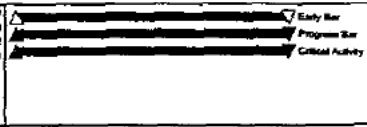
DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06







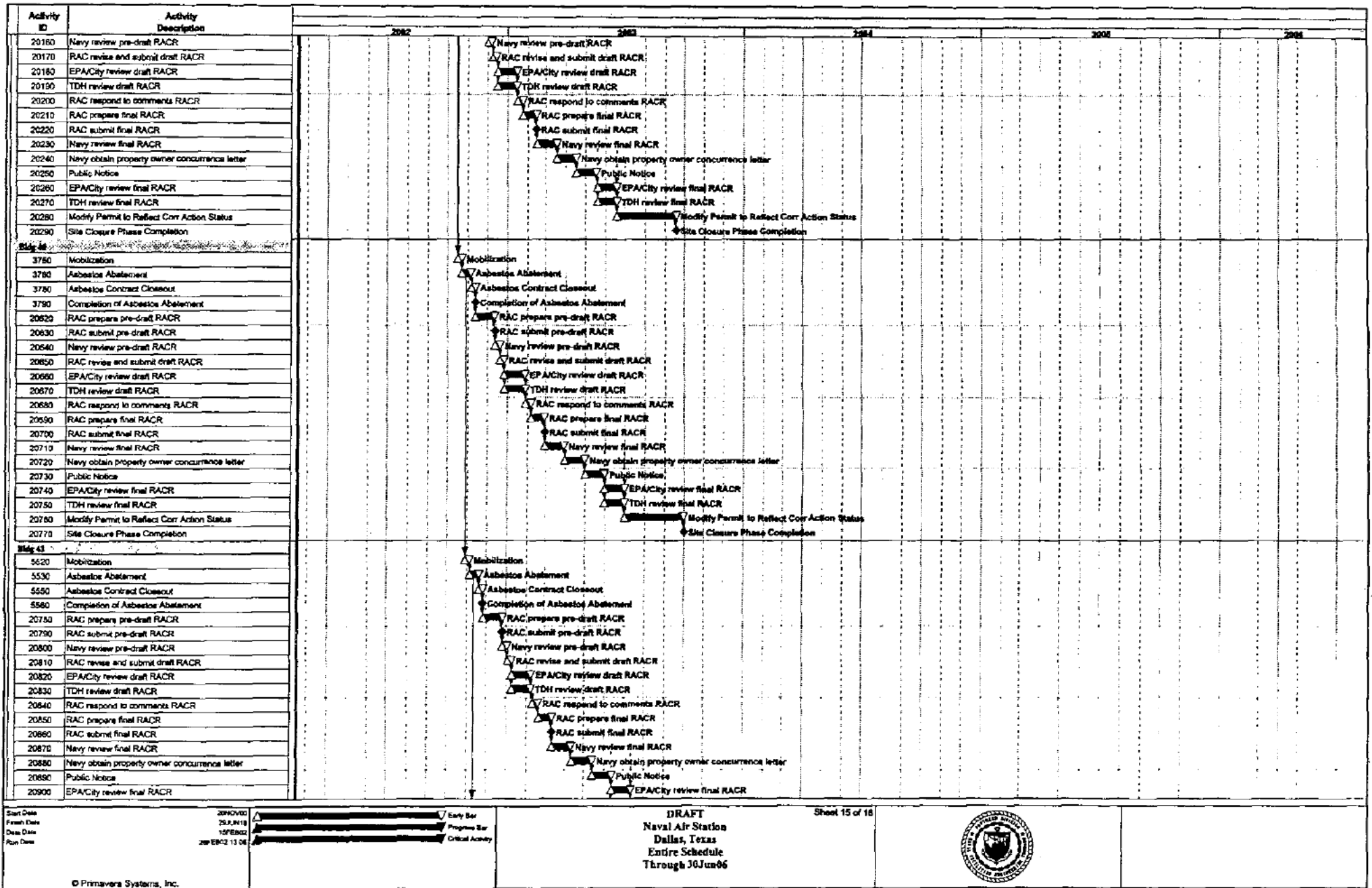
Start Date: 20NOV00
 Finish Date: 28JUN06
 Date Date: 19FEB02
 Hour Date: 20FEB02 13:08

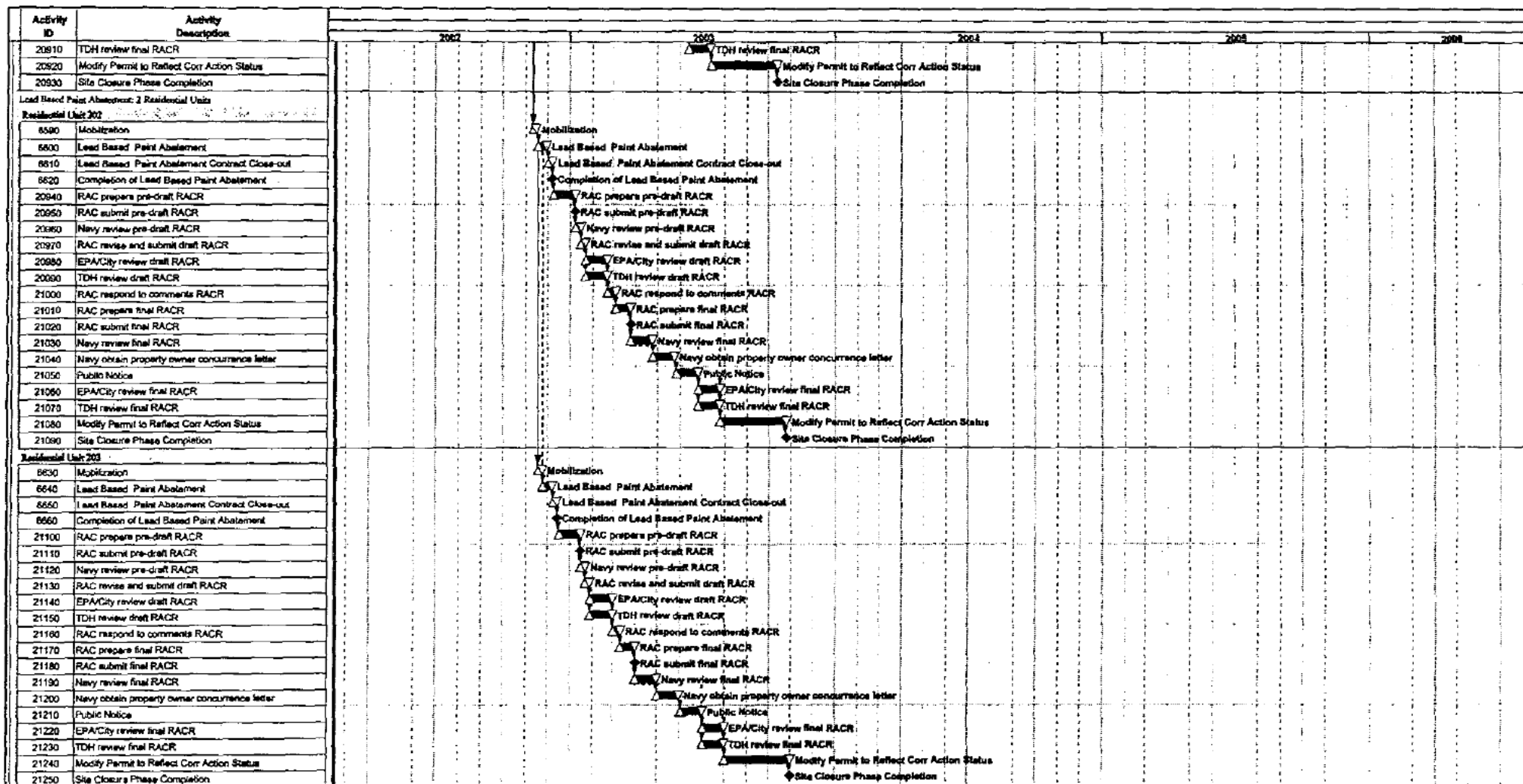


DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

Sheet 14 of 16







Start Date: 20070101
 Finish Date: 20090101
 Date Data: 15FEB02
 Run Date: 20FEB02 13:07

Legend:
 Early Bar
 Progress Bar
 Critical Activity

DRAFT
 Naval Air Station
 Dallas, Texas
 Entire Schedule
 Through 30Jun06

Sheet 16 of 16



account of Government related contamination. Except to the extent specified in this document, Government shall remain responsible for the remediation and mitigation of contamination occurring before the effective date of this Agreement or caused by Government's actions. Government will provide the City and any lessee copies of any documentation pursuant to this paragraph.

11. Notwithstanding anything contained elsewhere in this document, the Government agrees that it will continue to maintain all of the utility services within the Premises until the earlier occurrence of either (i) NASD reaches operational closure or (ii) the utility facilities are accepted by and conveyed to the appropriate private utility company or the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth below, by their duly authorized representatives.

THE UNITED STATES OF AMERICA

by:

[Signature]
Real Estate Contracting Officer

5-27-97
Date

WITNESS:

[Signature]

Brenda J. Hill

CONCURRENCE:

[Signature]
Captain D. A. Lewelling, Commanding
Officer, Dallas Naval Air Station

CITY OF DALLAS

John L. Ware, City Manager

by:

[Signature]
Assistant City Manager

8/6/97
Date

APPROVED AS TO FORM:

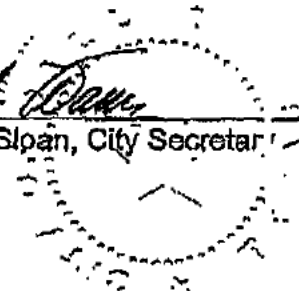
Sam Lindsay, City Attorney

by:

[Signature]
Assistant City Attorney subjected to City Attorney's approval SAP

ATTEST:

[Signature]
Robert Sloan, City Secretary



STATE OF SOUTH CAROLINA §
 §
COUNTY OF CHARLESTON §

Personally approached before me Martha L. Turner who, being duly sworn, says that She saw the within named E.R. Nelson sign and seal the foregoing **MODIFICATION NUMBER NINE TO LEASE NOY(R) - 44881** in behalf of the United States of America, and that She with Brenda J. Hill witnessed the execution thereof.

Subscribed and sworn to before me this 27th day of May, 1997.

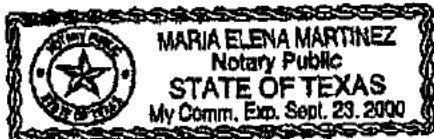
Coleria L. Smith
NOTARY PUBLIC FOR STATE OF SOUTH CAROLINA
My commission expires: ~~NOTARY PUBLIC FOR SOUTH CAROLINA~~
My commission expires November 28, 2003



THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on August 1, 1997, by Ryan S. Evans, Assistant City Manager of the City of Dallas a Texas municipal corporation, on behalf of said corporation.

Maria Elena Martinez MARIA ELENA MARTINEZ
Notary Public in and for the State of Texas



Robert C. Myers

ROBERT C. MYERS
R.P.L.S. NO. 3963
JOB NO: 35856-96
DATE: 01-21-97

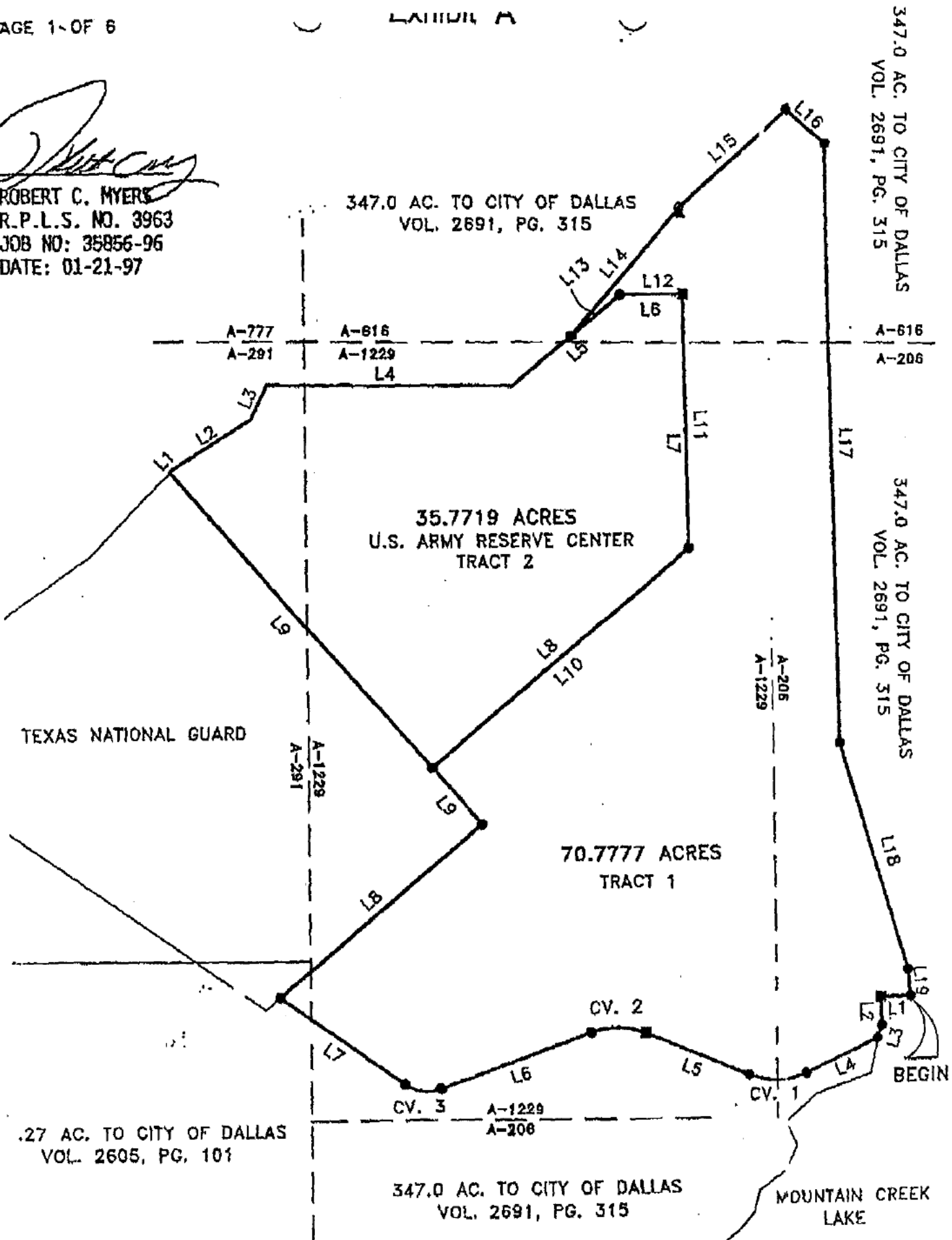


EXHIBIT A

LINE TABLE FOR TRACT 1

LINE	BEARING	DISTANCE
	N 89°40'00" W	101.77
1	S 01°15'00" E	96.10
2	S 20°35'00" W	45.02
3	S 65°46'28" W	269.37
4	N 67°46'54" W	376.26
5	S 70°05'56" W	537.54
6	N 54°26'05" W	505.87
7	N 49°34'00" E	898.10
8	N 40°26'00" W	251.10
9	N 49°34'00" E	1144.98
10	N 00°18'00" W	866.55
11	S 89°42'00" W	213.32
12	S 49°34'00" W	217.40
13	N 40°12'02" E	571.69
14	N 48°43'24" E	493.81
15	S 50°29'42" E	171.91
16	S 00°26'54" E	2051.18
17	S 15°45'25" E	804.71
18	S 04°17'36" E	90.36

LINE TABLE FOR TRACT 2

LINE	BEARING	DISTANCE
L1	N 43°59'00" E	18.19
L2	N 57°33'00" E	311.00
L3	N 26°16'54" E	128.50
L4	S 89°33'00" E	818.59
L5	N 49°34'00" E	477.42
L6	N 89°42'00" E	213.32
L7	S 00°18'00" E	866.55
L8	S 49°34'00" W	1144.93
L9	N 40°26'00" W	1326.43

CURVE DATA FOR TRACT 1

- 1. $\Delta = 46^{\circ}26'38''$
 $R = 250.00'$
 $T = 107.26'$
 $L = 202.65'$
- 2. $\Delta = 42^{\circ}07'010''$
 $R = 250.00'$
 $T = 96.26'$
 $L = 183.78'$
- 3. $\Delta = 55^{\circ}27'59''$
 $R = 130.00'$
 $T = 68.35'$
 $L = 125.85'$

LEGEND FOR TRACTS 1 AND 2

- = CORNER-NO POINT SET
- = SET 1/2" I.R. WITH YELLOW CAP STAMPED RPLS NO. 3963
- = SET P.K. NAIL

EXHIBIT "A"

PAGE 3 OF 6

LEGAL DESCRIPTION FOR TRACT 1

BEING SITUATED IN THE W. F. CRAWFORD SURVEY, ABSTRACT NUMBER 291, S. REAM SURVEY, ABSTRACT NUMBER 1229, B.B.B. AND C.R.R. SURVEY, ABSTRACT NUMBER 206, AND THE R. HUITT SURVEY, ABSTRACT NUMBER 616, DALLAS COUNTY, TEXAS, AND BEING A PART OF A CALLED 31.27 ACRE TRACT AND A 347.00 ACRE TRACT AS DESCRIBED IN DEEDS TO THE CITY OF DALLAS OF RECORD IN VOLUME 2605, PAGE 101 AND VOLUME 2691, PAGE 315 RESPECTIVELY, AND RECORDED IN THE DEED RECORDS OF SAID COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER IN AN EAST-WEST BOUNDARY LINE OF SAID 347 ACRE TRACT WHICH BEARS NORTH 89° 40' 00" WEST, A DISTANCE OF 220.72 FEET FROM A 1/2 INCH IRON ROD FOUND AT THE NORTHWEST CORNER OF A CALLED 23.8 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF DALLAS OF RECORD IN VOLUME 3228, PAGE 489, DEED RECORDS OF SAID COUNTY AND SAID BEGINNING POINT ALSO BEING LOCATED NORTH 19° 20' 32" EAST, A DISTANCE OF 2008.76 FEET FROM THE MOST SOUTHERN CORNER OF SAID 347.00 ACRE TRACT;

THENCE NORTH 89° 40' 00" WEST ALONG SAID EAST-WEST BOUNDARY LINE, A DISTANCE OF 101.77 FEET TO A P. K. NAIL SET FOR CORNER AT AN INTERIOR CORNER OF SAID 347.00 ACRE TRACT;

THENCE ALONG THE EASTERLY LINES OF SAID 347.00 ACRE TRACT SOUTH 01° 15' 00" EAST, A DISTANCE OF 96.10 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AND SOUTH 20° 35' 00" WEST, A DISTANCE OF 45.02 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER;

THENCE DEPARTING FROM THE EASTERLY BOUNDARY OF SAID 347.00 ACRE TRACT SOUTH 65° 46' 28" WEST, A DISTANCE OF 269.37 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER, AT THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 46° 26' 38" AND A CHORD WHICH BEARS SOUTH 88° 59' 47" WEST, A DISTANCE OF 197.15 FEET;

THENCE FOLLOWING A GENERALLY PARALLEL LINE TO AND SEVERAL FEET SOUTH OF AN EXISTING ASPHALT ROAD AS FOLLOWS:

- 1) WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 202.65 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 FOR SET CORNER;
- 2) NORTH 67° 46' 54" WEST, A DISTANCE OF 376.26 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AT THE BEGINNING IN A CURVE TO THE LEFT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 42° 07' 10" AND A CHORD WHICH BEARS NORTH 88° 50' 29" WEST, A DISTANCE OF 179.67 FEET;
- 3) WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 183.78 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER.

EXHIBIT A

PAGE 4 OF 6

- 4) SOUTH 70° 05' 56" WEST, A DISTANCE OF 537.54 FEET TO A 1/2 INCH IRON WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AT THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 130.00 FEET, A CENTRAL ANGLE OF 55° 27' 59" AND A CHORD WHICH BEARS NORTH 82° 10' 04" WEST, A DISTANCE OF 120.99 FEET;
- 5) WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 125.85 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER;
- 6) NORTH 54° 26' 05" WEST, A DISTANCE OF 505.87 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AND BEING IN THE SOUTHEAST LINE OF A CALLED 40.99 ACRE TRACT AS NOW LEASED BY THE TEXAS NATIONAL GUARD ARMORY AND DESCRIBED BY A LEASE AMENDMENT IN VOLUME 75185, PAGE 988, DEED RECORDS OF SAID COUNTY, FROM WHICH THE MOST SOUTHERN CORNER OF SAID 40.99 ACRE TRACT BEARS SOUTH 49° 34' 00" WEST, A DISTANCE OF 65.76 FEET;

THENCE NORTH 49° 34' 00" EAST ALONG THE SOUTHEAST LINE OF SAID 40.99 ACRE TRACT, A DISTANCE OF 898.10 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AT THE MOST EASTERN CORNER THEREOF;

THENCE NORTH 40° 26' 00" WEST ALONG THE NORTHEAST LINE OF SAID 40.99 ACRE TRACT, A DISTANCE OF 251.10 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AT THE MOST SOUTHERN CORNER OF A CALLED 35.77 ACRE TRACT KNOWN AS THE U.S. ARMY RESERVE CENTER;

THENCE NORTH 49° 34' 00" EAST ALONG THE SOUTHEAST LINE OF SAID 35.77 ACRE TRACT, A DISTANCE OF 1144.98 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AT THE MOST EASTERN SOUTHEAST CORNER THEREOF;

THENCE NORTH 00° 18' 00" WEST ALONG THE EAST LINE OF SAID 35.77 ACRE TRACT, A DISTANCE OF 866.55 FEET TO A P.K. NAIL SET FOR CORNER AT THE NORTHEAST CORNER THEREOF;

THENCE ALONG THE NORTHERLY LINE OF SAID 35.77 ACRE TRACT SOUTH 89° 42' 00" WEST, A DISTANCE OF 213.32 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER AND SOUTH 49° 34' 00" WEST, A DISTANCE OF 217.40 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER;

THENCE NORTH 40° 12' 02" EAST, A DISTANCE OF 571.69 FEET TO A POINT FOR CORNER FROM WHICH A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR REFERENCE BEARS SOUTH 05° 11' 19" EAST, A DISTANCE OF 7.16 FEET;

THENCE NORTH 48° 43' 24" EAST, A DISTANCE OF 493.81 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER;

EXHIBIT "A"

PAGE 5 OF 6

THENCE SOUTH 50° 29' 42" EAST, A DISTANCE OF 171.91 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER;

THENCE SOUTH 00° 26' 54" EAST ON A LINE WHICH IS 125.00 FEET FROM AND PARALLEL TO AN EXISTING ASPHALT ROAD, A DISTANCE OF 2051.18 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET AT AN ANGLE POINT;

THENCE SOUTH 15° 45' 25" EAST, CONTINUING ON A LINE WHICH IS 125.00 FEET FROM AND PARALLEL TO SAID ROAD, A DISTANCE OF 804.71 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. NO. 3963 SET FOR CORNER;

THENCE SOUTH 04° 17' 36" EAST, A DISTANCE OF 90.36 FEET TO THE PLACE OF BEGINNING AND CONTAINING 70.7777 ACRES OF LAND.

EXHIBIT "A"

PAGE 6 OF 6

LEGAL DESCRIPTION

BEING SITUATED IN THE S. REAM SURVEY, ABSTRACT NUMBER 1229, W. F. CRAWFORD SURVEY ABSTRACT NUMBER 291, AND THE R. HUITT SURVEY ABSTRACT NUMBER 616, DALLAS COUNTY, TEXAS, AND ALSO BEING A PART OF THAT CERTAIN CALLED 347 ACRE TRACT AS DESCRIBED IN A DEED TO THE CITY OF DALLAS OF RECORD IN VOLUME 2691, PAGE 315, DEED RECORDS OF SAID COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FOR CORNER IN THE NORTHWEST LINE OF SAID 347 ACRE TRACT AT THE MOST NORTHERN CORNER OF A 40.99 ACRE TRACT DESCRIBED IN A FIRST AMENDMENT OF LEASE BETWEEN THE CITY OF DALLAS AND THE TEXAS NATIONAL GUARD ARMORY BOARD RECORDED IN VOLUME 75185, PAGE 988, DEED RECORDS OF SAID COUNTY AND ALSO BEING LOCATED NORTH 56° 02' 57" WEST, A DISTANCE OF 3234.74 FEET FROM A 1/2 INCH IRON ROD FOUND AT THE NORTHWEST CORNER OF A 23.8 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF DALLAS, RECORDED IN VOLUME 3228, PAGE 489, DEED RECORDS OF SAID COUNTY AND FROM SAID BEGINNING POINT A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. #3963 SET FOR REFERENCE THAT BEARS SOUTH 40° 26' 00" EAST, A DISTANCE OF 50.17 FEET;

THENCE ALONG THE NORTHERLY LINE OF SAID 347 ACRE TRACT AS FOLLOWS:

- 1) NORTH 43° 59' 00" EAST, A DISTANCE OF 18.19 FEET;
- 2) NORTH 57° 33' 00" EAST, A DISTANCE OF 311.00 FEET;
- 3) NORTH 26° 16' 54" EAST, A DISTANCE OF 128.50 FEET;
- 4) SOUTH 89° 33' 00" EAST AT 147.00 FEET PASSING A 1/2 INCH IRON ROD FOUND FOR REFERENCE NEAR A CHAIN LINK FENCE AND CONTINUING FOR A TOTAL DISTANCE OF 818.59 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. #3963 SET FOR CORNER AND;
- 5) NORTH 49° 34' 00" EAST, A DISTANCE OF 260.02 FEET TO A 1/2 INCH IRON ROD SET WITH A YELLOW CAP STAMPED R.P.L.S. #3963 SET FOR CORNER AT AN ANGLE POINT IN SAID NORTHERLY LINE;

THENCE CONTINUING NORTH 49° 34' 00" EAST, AND DEPARTING THE NORTHERLY LINE OF SAID TRACT, A DISTANCE OF 217.40 TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. #3963 SET FOR CORNER;

THENCE NORTH 89° 42' 00" EAST, A DISTANCE OF 213.32 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 00° 18' 00" EAST, A DISTANCE OF 866.55 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. #3963 SET FOR CORNER;

THENCE SOUTH 49°34' 00" WEST, A DISTANCE OF 1144.98 FEET TO A 1/2 INCH IRON ROD WITH A YELLOW CAP STAMPED R.P.L.S. #3963 SET FOR CORNER IN THE NORTHEAST LINE OF SAID 40.99 ACRE TRACT;

THENCE NORTH 40° 26' 00" WEST ALONG SAID NORTHEAST LINE, A DISTANCE OF 1326.43 FEET TO THE PLACE OF BEGINNING AND CONTAINING 35.7719 ACRES OF LAND.

**MODIFICATION NUMBER TEN
TO LEASE NOY(R) - 44881
BETWEEN THE UNITED STATES OF AMERICA
AND THE CITY OF DALLAS, TEXAS**

THIS AGREEMENT is made by and between **THE UNITED STATES OF AMERICA**, acting by and through the Department of the Navy, hereinafter called the "Government", and the **CITY OF DALLAS**, a Texas municipal corporation, hereinafter called the "City".

WITNESSETH:

WHEREAS, Government leases certain real property at the Naval Air Station Dallas, Texas (NASD) from the City pursuant to LEASE NOY(R)-44881, hereinafter called the "LEASE", and

WHEREAS, Government has declared NASD and its associated properties surplus pursuant to the Base Closure and Realignment Act of 1993; and

WHEREAS, Government desires to release back to the City and City desires to accept a portion of the property under the LEASE prior to Government's completion or investigation and remediation of certain on-site contamination attributable to its use and possession of the Premises.

NOW THEREFORE, in consideration of the terms and conditions hereinafter set forth, Government agrees to release from the LEASE and the City agrees to accept approximately eight (8) acres of real property shown in Exhibit "A" attached hereto and made a part hereof, hereinafter called the "PREMISES". The City shall, within sixty (60) days from the date this agreement is executed, provide a metes and bounds survey, prepared by a Registered Professional Land Surveyor in the State of Texas, which will be incorporated into this agreement.

1. Government, U.S. Environmental Protection Agency (EPA), and Texas Natural Resources Conservation Commission (TNRCC) and their officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to the City and any lessee of the City, to enter upon the Premises for the purposes enumerated below and/or for such other purposes associated with environmental restoration activities on or around the Premises:

- (A) To conduct investigations and surveys, including, where necessary, drilling, test pitting, soil and water sampling, borings, and other activities related to the NASD Installation Restoration Programs; and
- (B) To inspect field activities of the Government and its contractors and subcontractors in implementing these programs; and

- (C) To conduct any test or survey required by EPA or TNRCC relating to the implementation of these programs or environmental conditions at the Premises or to verify any submissions to the EPA or TNRCC by the Government relating to such conditions; and
- (D) To construct, operate, maintain or undertake any response or remedial action as required or necessary including, but not limited to monitoring wells, pumping wells, treatment facilities, and soft excavations.

2. Unless it is determined that entrance is required for emergency purposes, Government will give City and any lessee 48-hour prior notice of its intention to enter the Premises. All necessary keys to the buildings and facilities which require investigation or remediation shall be made available to Government on request. Government and City agree to cooperate in good faith to minimize any potential conflicts between necessary environmental investigation and cleanup activities and City's or any lessee's operations. City agrees to comply with the provisions of any health and safety plan in effect during the course of any of the described response or remedial actions. Except to the extent authorized under any applicable Federal Law, the City or any lessee shall have no claim on account of such entries against the Government or any of its officers, agents, employees, or contractors.

3. Government is to provide, after notification from TNRCC, in writing, a description of all planned projects. This description shall include start time, finish time, area map (to scale) showing the area to be remediated and the area required to be secured. City or any lessee shall not construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the premises in any way which may adversely affect Government's environmental restoration activities. Government and City agree:

- (A) to cooperate in good faith to minimize any potential conflicts between necessary environmental investigation and clean-up activities and City's or any lessee's operations.
- (B) not to conduct or permit any surface excavation, digging, or drilling (including installation of water wells) or other disturbance of the surface without prior written approval of the Government, such consent not to be unreasonably withheld or delayed. In the event the Government has not responded to the City's or its lessee's submission within sixty (60) days, then it shall be conclusively deemed that the Government has approved the City's or its lessee's proposal.
- (C) that the City or any lessee will notify Government immediately should foreign substances such as debris, hazardous waste, petroleum products, etc. of any kind ("contaminated media") be unearthed while engaging in excavation activities. If neither the City, any lessee, or the Government had knowledge of the existence of contaminated media before excavating, digging, or drilling, then the City or any lessee shall notify the Government as soon as possible of the discovery of such contamination. Within forty-eight (48) hours of the Government receiving notification, the Government, the City, and any lessee shall devise a reasonable plan to remediate the contaminated media. City and any lessee shall not be responsible

for costs associated with the disposal of contaminated media which they and the Government had no knowledge of prior to conducting operations on the Premises.

- (D) that if the City or any lessee had knowledge of any contaminated media of prior to conducting its excavating, digging, or drilling, then the City and any lessee is responsible for disposing of any such contaminated media unearthed in the City's or any lessee's excavating, digging, or drilling project(s).
- (E) that the City or any lessee shall not interfere with the ability of the Government, its agents, or contractors, to establish and maintain a reasonable number of secured areas to allow for the initiation and completion of all necessary environmental investigation and remedial activities necessary to address contaminated sites within the boundaries of the Premises. The Government agrees to coordinate with the City or any lessee before establishing any secured areas to minimize any potential conflicts between necessary environmental investigation and clean-up activities and the City's or any lessee's operations.
- (F) that the City agrees that it will maintain, and will require any lessee to maintain clearance of not less than twenty five (25) feet from any monitoring well installed by the Government or its contractors.

4. The City and any lessee shall not interfere with the ability of the Government, its agents and/or contractors to utilize, collect, handle, and transport on the Premises those petroleum products, hazardous or non-hazardous materials, substances, or wastes necessary for Government implementation of all necessary environment investigation or remediation activities.

5. In the event environmental contamination is discovered on the Premises which creates, in the Government's determination, and with the concurrence of TNRCC, an imminent and substantial endangerment to human health or the environment, the City or any lessee shall vacate, or require any sublessee to vacate, the Premises immediately upon notice from the Government of the existence of such a condition and the requirements to so vacate the Premises. Exercise of this right by the Government shall be without liability except to the extent authorized by applicable Federal law.

6. All of the buildings are assumed to contain lead based paint. City and any lessee should comply with any applicable federal, state, or local laws regulating management of lead based paint.

7. The City acknowledges notice by Government that asbestos-containing material is located in Building 604, 605, and 609. The asbestos containing material is in a non-friable condition, therefore does not require remediation. The Government will not be responsible for asbestos abatement should modifications be made to the buildings by the City or Lessee that would cause the asbestos to be disturbed. Any abatement or remediation required must be handled in accordance with 40 CFR 61, Part M, or any other applicable law.

8. For the purpose of ingress and egress to the property still retained by the Government under the LEASE the Government retains the non-exclusive right to use the Perimeter Road on

the Premises for the passage of vehicular traffic for as long as said LEASE is in effect, or any environmental survey or remediation activities are underway.

9. The City shall provide written notices to the Government of any transfer, lease or license of all or any portion of the Premises. The restrictions herein provided shall be included in any transfer document, lease or license issued on the Premises.

10. Except for the non-exclusive right to use the Perimeter Road as provided in Paragraph 8 above, the terms and conditions herein above shall remain in effect until such time that the Government receives concurrence from the appropriate State or Federal regulatory authority that no further remedial activities are required on the Premises on account of Government related contamination. Except to the extent specified in this document, the Government shall remain responsible for the remediation and mitigation of contamination occurring before the effective date of this Agreement or caused by Government's actions. The Government will provide the City and any lessee copies of any documentation pursuant to this paragraph.

11. Notwithstanding anything contained elsewhere in this document, it is agreed that the City shall be responsible for obtaining and maintaining all required utilities associated with the property outlined in Exhibit "A."

12. The City hereby agrees that the Navy may terminate the Lease in part or its entirety at any time upon 60 days written notice.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth below, by their duly authorized representatives.

THE UNITED STATES OF AMERICA

CITY OF DALLAS

GAVINO D. SOTELO

~~Interim City Manager~~ Interim City Manager

by: [Signature]
Real Estate Contracting Officer

by: [Signature]
Assistant City Manager

8-11-98
Date

9/9/98
Date

WITNESS:
[Signature]

APPROVED AS TO FORM:
Sam Lindsay, City Attorney

[Signature]

by: [Signature]
Assistant City Attorney
Submitted to City Attorney [Signature]

CONCURRENCE:
[Signature]
Captain D. A. Lewelling, Commanding
Officer, Dallas Naval Air Station

ATTEST:
SHIRLEY AGY, Acting City Secretary
[Signature]
~~XXXXXXXXXXXXXXXXXXXX~~

STATE OF SOUTH CAROLINA §
§
COUNTY OF CHARLESTON §

Personally approached before me Robert Jordan, who, being duly sworn, says that he saw the within named E.R. Nelson sign and seal the foregoing MODIFICATION NUMBER TEN TO LEASE NOY(R) - 44881 in behalf of the United States of America, and that she with Dorothy D. Jones witnessed the execution thereof.

Subscribed and sworn to before me this 11th day of August 1998.

Colonia L. Smith
NOTARY PUBLIC FOR STATE OF SOUTH CAROLINA
My commission expires: NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires November 29, 2003

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on September 9, 1998, by Ryan S. Evans, Assistant City Manager of the City of Dallas, a Texas municipal corporation, on behalf of said corporation.



Maria Elena Martinez
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

[ATTACHMENT TO ADDENDUM 4]

ADJUSTMENTS TO MODIFICATION NO. 9

Pursuant to Paragraph 14d of the Settlement Agreement between the United States and the City of Dallas and Addendum 4 thereto, the parties agree to be bound by the following terms in connection with the properties subject to leases (2) and (3) described in Addendum 4 (the United States is herein referred to as "Government"; Dallas is herein referred to as "Lessor"):

1. Government, U.S. Environmental Protection Agency ("EPA"), and Texas Natural Resource Conservation Commission, to be known as the Texas Commission on Environmental Quality ("TCEQ"), and their officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to Lessor and Lessee, to enter upon the Leased Premises for the purposes enumerated below and/or for such other purposes associated with environmental restoration activities on or around the Leased Premises:

(A) To conduct investigation and surveys, including, where necessary, drilling, test pitting, soil and water sampling, borings, and other activities related to the NASD Installation Restoration Programs; and

(B) To inspect field activities of the Government and its contractors and subcontractors in implementing these programs; and

(C) To conduct any test or survey required by EPA or TCEQ relating to the implementation of these programs or environment conditions at the Leased Premises or to verify any submissions to the EPA or TCEQ by the Government relating to such conditions; and

(D) To construct, operate, maintain or undertake any response or remedial action as required or necessary including, but not limited to monitoring wells, pumping wells, treatment facilities, and soil excavations.

2. Unless it is determined that entrance is required for emergency purposes, Government will give Lessor and Lessee 48-hour prior notice of its intention to enter the Leased Premises. All necessary access to the buildings and facilities which require investigation or remediation shall be made available

to Government on request. Government and Lessor have agreed to cooperate in good faith to minimize any potential conflicts between necessary environmental investigation and cleanup activities and Lessor's and Lessee's operations. Lessor agrees to comply with the provision of any health and safety plan in effect during the course of any of the described response or remedial actions. Except to the extent authorized under any applicable Federal law, Lessor or Lessee shall have no claim on account of such entries against the Government or any officer, agent, employee, or contractor conducting authorized environmental restoration activities.

3. Government is to provide, after notification from TCEQ, in writing, a description of all planned projects. This description shall include start time, finish time, area map (to scale) showing the area to be remediated and the area required to be secured. Lessor or Lessee shall not construct or make any substantial alterations, additions or improvements to or installations upon or otherwise modify or alter the premises in any way which may adversely affect Government's environmental restoration activities. Government and Lessor have agreed:

(A) to cooperate in good faith to minimize any potential conflicts between necessary environmental investigation and clean-up activities and Lessor's or Lessee's operations.

(B) not to conduct or permit any surface excavation, digging, or drilling (including installation of water wells) or other disturbance of the surface without prior written approval of the Government, such consent not to be unreasonably withheld or delayed. In the event the Government has not responded to Lessor's or Lessee's submission within thirty (30) days, then it shall be conclusively deemed that Government has approved Lessor's or Lessee's proposal. Notwithstanding the foregoing, Lessee may respond to emergencies creating risk of personal injury or property damage on the Leased Premises without prior notice to Government, provided Lessee shall furnish prompt follow up notice to Government of the occurrence of any such emergency.

(C) that Lessor or Lessee will notify Government immediately should foreign substances such as debris, hazardous waste, petroleum products, etc. of any kind ("Contaminated Media") be unearthed while engaging in excavation activities. If neither Lessor, Lessee, nor Government had knowledge of the

existence of contaminated media before excavating, digging, or drilling, then Lessor or Lessee shall notify Government as soon as possible of discovery of such contamination. Within 48 hours of Government receiving notification, Government, Lessor and Lessee will devise a reasonable plan to remediate the Contaminated Media. Lessor and Lessee shall not be responsible for costs associated with the disposal of contaminated media which they and the Government had no knowledge of prior to conducting operations on the Leased Premises.

(D) that if Lessor or Lessee had knowledge of any Contaminated Media prior to conducting its excavating, digging or drilling, then Lessor and Lessee are responsible for disposing of any such Contaminated Media unearthed in Lessor's or Lessee's excavating, digging or drilling project or projects.

(E) that Lessor or Lessee shall not interfere with the ability of the Government, its agents, or contractor, to establish and maintain a reasonable number of secured areas to allow for the initiation and completion of all necessary environmental investigation and remedial activities necessary to address contaminated sites within the boundaries of the Leased Premises. Government agrees to coordinate with Lessor or Lessee before establishing any secured areas to minimize any potential conflicts between necessary environmental investigation and clean-up activities and Lessor's or Lessee's operations.

(F) that Lessor agrees that it will maintain, and will require Lessee to maintain, clearance of not less than twenty five (25) feet from any monitoring well installed by Government or its contractor.

4. Lessor and Lessee shall not interfere with the ability of the Government, its agents and/or contractors to utilize, collect, handle, and transport on the Leased Premises those petroleum products, hazardous or non-hazardous materials, substances, or wastes necessary for Government implementation of all necessary environment investigation or remediation activities.

5. In the event environmental contamination is discovered on the Leased Premises which creates, in the Government's determination, and with the concurrence of TCEQ, an imminent and substantial endangerment to

ATTACHMENT TO ADDENDUM 4

human health or the environment, the City or Lessee shall vacate, or require any sublessee to vacate, the Leased Premises immediately upon notice from the Government of the existence of such a condition and the requirements to so vacate the Leased Premises. Exercise of this right by the Government shall be without liability except to the extent authorized by applicable Federal law.

6. All of the buildings are assumed to contain lead based paint. Lessor and Lessee should comply with any applicable federal, state or local laws regulating management of lead based paint.

7. Government will not be responsible for asbestos abatement for any buildings on the Leased Premises.

8. For the purpose of ingress and egress to other property owned by Lessor, the Government retains the nonexclusive right to use the Perimeter Road on the Leased Premises for the passage of vehicular traffic for as long as any environmental survey or remediation activities are underway.

9. Lessor shall provide written notices to the Government of any transfer, lease or license of all or any portion of the Leased Premises. The restrictions herein provided shall be included in any transfer document, lease or license issued on the Leased Premises.

10. Except for the non-exclusive right to use the Perimeter Road as provided in Paragraph 8 above, the terms and conditions hereinabove shall remain in effect until such time that the Government receives concurrence from the appropriate State or Federal regulatory authority that no further remedial activities are required on the Leased Premises on account of Government related contamination. Except to the extent specified in this document, Government shall remain responsible for the remediation and mitigation of contamination occurring before the effective date of this Amendment or caused by Government's actions. Government will provide Lessor and Lessee copies of any documentation pursuant to this paragraph.

ADDENDUM 4

The following four leases are referenced in Paragraph 14d of the Settlement Agreement, and identified on Addendum 2 as Texas Military Facilities Commission ("TMFC") Leases (Leases 1-3) and the TXU Lease (Lease 4).

- (1) ***Lease Agreement of Land Facilities by and between The City of Dallas and the Texas National Guard Armory Board executed July 18, 1997, affecting two tracts of land identified by metes and bounds in said Lease Agreement, subject to the terms of Modification No. 9 to the NASD Lease, attached hereto.***

- (2) ***Lease Agreement by and between The City of Dallas and the Texas National Guard Armory Board executed July 1, 1983, affecting a tract of land identified by metes and bounds in said Lease Agreement, subject to the Adjustments to Modification No. 9 to the NASD Lease, attached hereto.***

- (3) ***Lease Agreement by and between The City of Dallas and the Texas National Guard Armory Board by City Council Resolution No. 75-1250 approved April 14, 1975 affecting a tract of land identified by metes and bounds in said Lease Agreement, subject to the Adjustments to Modification No. 9 to the NASD Lease, attached hereto.***

- (4) ***Lease Agreement of Land and Facilities by and between The City of Dallas and the Texas Utilities Electric Company dated September 9, 1998, approved by City Council Resolution No. 98-1967 on June 24, 1998, affecting tracts of land identified in said Lease Agreement, subject to the terms of Modification No. 10 to the NASD Lease, attached hereto.***

Attached hereto, as set forth in Paragraph 14d of the Settlement Agreement, are copies of Modification Nos. 9 & 10 to the NASD Lease and of the Adjustments to Modification No. 9 referenced above.

**MODIFICATION NUMBER NINE
TO LEASE NOY(R) - 44881
BETWEEN THE UNITED STATES OF AMERICA
CITY OF DALLAS, TEXAS**

THIS AGREEMENT is made by and between **THE UNITED STATES OF AMERICA**, acting by and through the Department of the Navy, hereinafter called the "Government", and the **CITY OF DALLAS**, a Texas municipal corporation, hereinafter called the "City".

WITNESSETH:

WHEREAS, Government leases certain real property at the Naval Air Station Dallas, Texas (NASD) from the City pursuant to LEASE NOY(R) - 44881, hereinafter the "LEASE", and

WHEREAS, Government has declared NASD and its associated properties surplus pursuant to the Base Closure and Realignment Act of 1993; and

WHEREAS, Government desires to release back to the City and City desires to accept a portion of the property under the LEASE prior to Government's completion or investigation and remediation of certain on-site contamination attributable to its use and possession of the Premises.

NOW THEREFORE, in consideration of the terms and conditions hereinafter set forth, Government agrees to release from the LEASE and the City agrees to accept approximately 106.55 acres of real property shown in Exhibit "A" attached hereto and made a part hereof, hereinafter called the "PREMISES".

1. Government, U.S. Environmental Protection Agency (EPA), and Texas Natural Resource Conservation Commission (TNRCC) and their officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to the City and any lessee of the City, to enter upon the Premises for the purposes enumerated below and/or for such other purposes associated with environmental restoration activities on or around the Premises:

(A) To conduct investigation and surveys, including, where necessary, drilling, test pitting, soil and water sampling, borings, and other activities related to the NASD Installation Restoration Programs; and

(B) To inspect field activities of the Government and its contractors and subcontractors in implementing these programs; and

(C) To conduct any test or survey required by EPA or TNRCC relating to the implementation of these programs or environment conditions at the Premises or to verify any submissions to the EPA or TNRCC by the Government relating to such conditions; and

(D) To construct, operate, maintain or undertake any response or remedial action as required or necessary including, but not limited to monitoring wells, pumping wells, treatment facilities, and soft excavations.

2. Unless it is determined that entrance is required for emergency purposes, Government will give City and any lessee 48-hour prior notice of its intention to enter the Premises. All necessary keys to the buildings and facilities which require investigation or remediation shall be made available to Government on request. Government and City agree to cooperate in good faith to minimize any potential conflicts between necessary environmental investigation and cleanup activities and City's or any lessee's operations. City agrees to comply with the provisions of any health and safety plan in effect during the course of any of the described response or remedial actions. Except to the extent authorized under any applicable Federal law, City or any lessee shall have no claim on account of such entries against the Government or any officer, agent, employee, or contractor.

3. Government is to provide, after notification from TNRCC, in writing, a description of all planned projects. This description shall include start time, finish time, area map (to scale) showing the area to be remediated and the area required to be secured. City or any lessee shall not construct or make any substantial alterations, additions or improvements to or installations upon or otherwise modify or alter the premises in any way which may adversely affect Government's environmental restoration activities. Government and City agree:

(A) to cooperate in good faith to minimize any potential conflicts between necessary environmental investigation and clean-up activities and City's or any lessee's operations.

(B) not to conduct or permit any surface excavation, digging, or drilling (including installation of water wells) or other disturbance of the surface without prior written approval of the Government, such consent not to be unreasonably withheld or delayed. In the event the Government has not responded to the City's or its lessee's submission within sixty (60) days, then it shall be conclusively deemed that Government has approved the City's or its lessee's proposal.

(C) that City or any lessee will notify Government immediately should foreign substances such as debris, hazardous waste, petroleum products, etc. of any kind ("contaminated media") be unearthed while engaging in excavation activities. If neither City, any lessee, or Government had knowledge of the existence of contaminated media before excavating, digging, or drilling, then City or any lessee shall notify Government as soon as possible of discovery of such contamination. Within 48 hours of Government receiving notification, Government, City and any lessee will devise a reasonable plan to remediate the contaminated media. City and any lessee shall not be responsible for costs associated with the disposal of contaminated media which they and the Government had no knowledge of prior to conducting operations on the Premises.

(D) that if City or any lessee had knowledge any contaminated media of prior to conducting its excavating, digging or drilling, then City and any lessee is responsible for disposing of any such contaminated media unearthed in City's or any lessee's excavating, digging or drilling project or projects.

(E) that City or any lessee shall not interfere with the ability of the Government, its agents, or contractor, to establish and maintain establish a reasonable number of secured

areas to allow for the initiation and completion of all necessary environmental investigation and remedial activities necessary to address contaminated sites within the boundaries of the Premises. Government agrees to coordinate with City or any lessee before establishing any secured areas to minimize any potential conflicts between necessary environmental investigation and clean-up activities and City's or any lessee's operations.

(F) that City agrees that it will maintain, and will require any lessee to maintain, clearance of not less than twenty five (25) feet from any monitoring well installed by Government or its contractor.

4. City and any lessee shall not interfere with the ability of the Government, its agents and/or contractors to utilize, collect, handle, and transport on the Premises those petroleum products, hazardous or non-hazardous materials, substances, or wastes necessary for Government implementation of all necessary environment investigation or remediation activities.

5. In the event environmental contamination is discovered on the Premises which creates, in the Government's determination, and with the concurrence of TNRCC, an imminent and substantial endangerment to human health or the environment, the City or any lessee shall vacate, or require any sublessee to vacate, the Premises immediately upon notice from the Government of the existence of such a condition and the requirements to so vacate the Premises. Exercise of this right by the Government shall be without liability except to the extent authorized by applicable Federal law.

6. All of the buildings are assumed to contained lead based paint. City and any lessee should comply with any applicable federal, state or local laws regulating management of lead based paint.

7. City acknowledges notice by Government that asbestos containing material is located in Building 801, 802, 134, 135, 136 and 137. The asbestos containing material is in a non-friable condition, therefore does not require remediation. The Government will not be responsible for asbestos abatement should modifications be made to the buildings by the City or Lessee that would cause the asbestos to be disturbed. Any abatement or remediation required must be handled in accordance with 40 CFR 61, Part M, or any other applicable law.

8. For the purpose of ingress and egress to the property still retained by the Government under the LEASE the Government retains the non exclusive right to use the Perimeter Road on the Premises for the passage of vehicular traffic for as long as said LEASE is in effect, or any environmental survey or remediation activities are underway.

9. City shall provide written notices to the Government of any transfer, lease or license of all or any portion of the Premises. The restrictions herein provided shall be included in any transfer document, lease or license issued on the Premises.

10. Except for the non-exclusive right to use the Perimeter Road as provided in Paragraph 8 above, the terms and conditions hereinabove shall remain in effect until such time that the Government receives concurrence from the appropriate State or Federal regulatory authority that no further remedial activities are required on the Premises on