

**FINDING OF SUITABILITY TO TRANSFER
(FOST)**

[Name of installation]

[Parcel or Specific Area]

[Date]

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(FOST)**

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[Date]

1. PURPOSE

The purpose of this Finding Of Suitability To Transfer (FOST) is to document the environmental suitability of certain parcels or property at _____ **[Name of installation]** for transfer to the _____ **[Name of transferee]** consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense (DOD) policy. In addition, the FOST includes the CERCLA Notice, Covenant, and Access Provisions and other Deed Provisions and the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment after such transfer.

2. PROPERTY DESCRIPTION

The property consists of _____ acres, which includes _____ buildings and _____ acres of undeveloped land. The property was previously used as _____ **[Describe past Army activities, e.g., industrial, administrative, housing, etc.]** The property is intended to be transferred as _____ **[Describe intended reuse]** and is consistent with the intended reuse of the property as set forth in the _____ **[Name of LRA]** Reuse Plan. A site map of the property is attached (Enclosure _____).

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the property was made based upon the _____ **[List primary environmental surveys, e.g., Environmental Baseline Survey (EBS), etc.]** The information provided is a result of a complete search of agency files during the development of these environmental surveys.

A complete list of documents providing information on environmental conditions of the property is attached (Enclosure _____).

[Editorial note – This list should be a comprehensive list that includes the EBS and other relevant documents, e.g., NEPA analysis, Remedial Investigations, Feasibility Studies, Asbestos Surveys, Lead Based Paint Surveys, Radiological Surveys, Radon Surveys, Munitions Response Reports, Statement of Munitions and Explosive (MEC) Removal, etc.]

4. ENVIRONMENTAL CONDITION OF PROPERTY

The DOD Environmental Condition of Property (ECP) categories for the property are as follows:

ECP Category 1: _____ [List specific buildings, parcels, or operable units]

ECP Category 2: _____ [List specific buildings, parcels, or operable units]

ECP Category 3: _____ [List specific buildings, parcels, or operable units]

ECP Category 4: _____ [List specific buildings, parcels, or operable units]

A summary of the ECP categories for specific buildings, parcels, or operable units and the ECP category definitions is provided in Table 1 – Description of Property (Enclosure _____).

[Editorial Note – The Army may only transfer ECP 5, 6, or 7 property if the property is transferred under a deferred covenant in accordance with CERCLA 120(h)(3)(C), because these categories indicate that all remedial action has not been completed.]

4.1. Environmental Remediation Sites

There were _____ remediation sites located on the property. A summary of the environmental remediation sites on the property is as follows: _____ [List sites, e.g., Operable Unit 1 – Old Solvent Disposal Pit, Operable Unit 2 – Groundwater contamination .] All environmental soil and groundwater remediation activities on the property have been completed or are in place and operating properly and successfully. [Alternate language: The property was not remediated to levels suitable for unrestricted use. The deed will include the following land use restrictions _____ [List land use restrictions, e.g., no residential activities, no use of groundwater, no excavation at designated locations] See _____ for additional information. [Cite the Record of Decision, Decision Document, Remedial Design, or other appropriate documentation.] A summary of the environmental remediation sites is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure _____).

[Editorial Note – Specific language may vary. If a site is investigated and there is no evidence of a release of hazardous substances in excess of 40 CFR 373 reportable quantities, the site should be included on Table 1 – Description of Property, but not be listed on Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal.]

[Alternate language: There are no environmental investigation/remediation sites and no evidence of groundwater contamination on the property.]

4.2. STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES

Hazardous substances were stored for one year or more and released or disposed of on the property in excess of reportable quantities specified in 40 CFR Part 373. All hazardous substance storage operations have been terminated on the property. Hazardous substances were released in excess of the 40 CFR 373 reportable quantities at the following sites: _____ [List sites.] The release or disposal of these hazardous substances was remediated at the time of the release or as part of the Installation Restoration Program (IRP). See Section 4.1 Environmental

Remediation Sites for additional information. A summary of the buildings or areas in which hazardous substance activities occurred is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure ____). The CERCLA 120(h)(3) Notice, Description, and Covenant at Enclosure ____ will be included in the Deed.

[Alternate language: There is no evidence that hazardous substances were stored, released, or disposed of on the property in excess of the 40 CFR Part 373 reportable quantities. The CERCLA 120(h)(4) Notice and Covenant at Enclosure ____ will be included in the Deed.]

4.3. PETROLEUM AND PETROLEUM PRODUCTS

4.3.1. UNDERGROUND AND ABOVE-GROUND STORAGE TANKS (UST/AST)

Current UST/AST Sites - There are ____ underground and/or ____ above-ground petroleum storage tanks (UST/AST) on the property. Petroleum product releases occurred at the following sites: ____ **[List sites.]** The release of these petroleum products was remediated at the time of the release or as part of the UST/AST closure. See ____ for additional information. **[Cite closure report, no further action letter, or other appropriate documentation (if any).]**

[Alternate language: There is no evidence of petroleum releases from these sites.]

Former UST/AST Sites - There were ____ underground and/or ____ above-ground petroleum storage tanks (UST/AST) on the property that have been removed or closed in place. Petroleum product releases occurred at the following sites: ____ **[List sites.]** The release of these petroleum products was remediated at the time of the release or as part of UST/AST closure. See ____ for additional information. **[Cite closure report, no further action letter, or other appropriate documentation (if any)]**

[Alternate language: There is no evidence of petroleum releases from these sites.]

A summary of the UST/AST petroleum product activities is provided in Table 3 – Notification of Petroleum Products Storage, Release, or Disposal (Enclosure ____).

[Alternate language: There is no evidence that petroleum products were stored in underground or above-ground storage tanks on the property.]

4.3.2. Non-UST/AST Storage, Release, or Disposal of Petroleum Products

There was non-UST/AST storage of petroleum products in excess of 55 gallons for one year or more on the property. The petroleum was used for the following types of activities: ____ **[List activities - e.g., motor pool operations, industrial operations, etc.]** All non-UST/AST petroleum product storage operations have been terminated on the property. There was no evidence of petroleum releases in excess of 55 gallons as a result of these activities. **[Alternative language:** Petroleum product release or disposal in excess of 55 gallons occurred at

the following buildings or areas: _____ **[List sites]** The release or disposal of these petroleum products was remediated at the time of the release or as part of the installation restoration program. See _____ for additional information. **[Cite no further action letter, or other appropriate documentation (if any)]**

A summary of the non-UST/AST petroleum activities is provided in Table 3 – Notification of Petroleum Products Storage, Release, or Disposal (Enclosure _____).

_____ **[Alternate language:** There is no evidence that non-UST/AST petroleum products in excess of 55 gallons were stored for one year or more on the property.]

4.4. POLYCHLORINATED BIPHENYLS (PCB)

The following PCB-containing equipment is located on the property: _____ **[List type and location of equipment, e.g., transformer in Building XX, etc.]** This equipment is operational, properly labeled in accordance with federal and state regulations, and has been determined not to be leaking. **[Alternate language:** There is evidence of releases from the PCB-containing equipment at the following sites: _____ **[List sites. NOTE: If PCB transformers are present, then include the PCB Notice and Covenant in the EPPs.]** The PCBs were remediated at the time of the release or as part of the installation restoration program. See _____ for additional information **[Cite the Record of Decision, Decision Document, or other appropriate documentation (if any)]**

[Alternate language: There is no evidence that PCB-containing equipment is located or was previously located on the property.]

[Editorial note – A PCB deed notice provision is generally not required unless the property has significant PCB issues. Please consult with the appropriate Army lawyer if you believe that a PCB Notice EPP is necessary. However, if there is storage, release, or disposal of PCB on the property in excess of the 40 CFR Part 373 reportable quantities, this information should be included on Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal.]

4.5. ASBESTOS

There is asbestos-containing material (ACM) in the following buildings: _____ **[List buildings]** The ACM includes: _____ **[Describe types of ACM, e.g., floor tiles, insulation, etc.]** See _____ for additional information. **[Cite Asbestos Survey (if any)]** The ACM does not currently pose a threat to human health or the environment because all friable asbestos that posed an unacceptable risk to human health has been removed or encapsulated.

[Alternate language: Any remaining friable asbestos that has not been removed or encapsulated will not present an unacceptable risk to human health because _____, **[Explain why, e.g., the buildings are scheduled for demolition and no occupation of the buildings will be permitted prior to demolition.]** The deed will include an asbestos warning and covenant (Enclosure _____).]

[Alternate language: There is no evidence that buildings or structures with ACM are located on the property.]

4.6. LEAD-BASED PAINT (LBP)

The following buildings are known or presumed to contain lead-based paint (LBP): _____ **[List buildings]** See _____ for additional information **[Cite LBP Survey (if any)]** The property was not used for residential purposes and the transferee does not intend to use the property for residential purposes in the future. **[Alternate language:** The property was used for residential purposes and the transferee intends to use the property for residential purposes in the future.] The deed will include a lead-based paint warning and covenant (Enclosure _____).

[Alternate language: Based on the age of the buildings (constructed after 1978), no buildings on the property are presumed to contain lead-based paint.]

4.7. RADIOLOGICAL MATERIALS

The following buildings were used for radiological activities: _____ **[List buildings and describe radiological activities, e.g., low-level sealed radioactive sources for research and development, tritium exit signs, etc.]** There is no evidence of any release of radiological materials at these buildings. **[Alternate language:** There was a release of radiological material at the following buildings: _____ **[List buildings]** The following actions were taken to remediate the radiological material: _____ **[Describe remediation activities]** A radiological field survey was conducted at those sites having radiological activities and the survey concluded these areas are suitable for unrestricted use. See _____ for additional information. **[Cite radiological field survey.]**

[Alternate language: There is no evidence that radioactive material or sources were stored or used on the property.]

4.8. RADON

Radon surveys were conducted in _____ buildings on the property. Radon was detected at above the EPA residential action level of 4 picocuries per liter (pCi/L) in the following buildings: _____ **[List buildings and radon level, e.g., Building 100 (8 pCi/L), etc.]**

[Alternate language: Radon surveys were conducted in _____ buildings on the property. Radon was not detected at above the EPA residential action level of 4 picocuries per liter (pCi/L) in these buildings.]

[Alternate language: There were no radon surveys conducted on the property.]

4.9. MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

Based on a review of existing records and available information, there is no evidence that Munitions and Explosives of Concern (MEC) are present on the property. In addition _____ **[Explain basis for concluding there is no MEC on the property (e.g., the property was historically used exclusively as an administrative area, there is no record of MEC being discovered on the property, there is no record that munitions-related activities occurred).]** The term “MEC” means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

[Alternate language: – Based on a review of existing records and available information, there was evidence that Munitions and Explosives of Concern (MEC) are **[or may]** be present on the property. The property was previously used for _____ **[Describe munitions-related activities (e.g., used as an operational range for live-fire training or testing, used for open burning (OB) or open detonation (OD) of munitions, or used as a munitions operating facility for production, renovation, etc.)]** that could result in the presence of MEC. The term “MEC” means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

A summary of the munition response sites (MRS) on the property is as follows: _____ **[List sites (e.g., Test Range Impact Area #1, OB/OD Area #1, Munitions Production Buildings 10, 11, and 12.)** On _____, a munitions response to MEC was conducted and _____ **[Describe each munitions response (e.g., type of munitions response {e.g., surface removal, removal to detected depth}, number of MEC items recovered, amount of scrap metal recovered]** The _____ **[Statement of MEC Removal” or other appropriate document]** concluded _____. **[Summarize “Statement of MEC Removal.”]**

A copy of the _____ **[Statement of MEC Removal or other appropriate document.]** is provided as Enclosure _____. A summary of MEC discovered on the property is provided in Table 4 – Notification of Munitions and Explosives of Concern (Enclosure ____). Given the property’s past use, the deed will include the Table 4- Notification of MEC and a MEC Notice (Enclosure ____).]

[Editorial note – If the property has MEC, the MEC issue should be addressed first and listed as FOST Section 4.1. All FOSTs with property known or suspected to contain MEC, even residual MEC remaining after a munitions response, must be signed by the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) (DASA(ESOH)). The explosives safety aspects of the transfer documents must be submitted through the US Army Technical Center for

Explosives Safety to the Department of Defense Explosives Safety Board for review and approval of the explosives safety provisions of transfer, prior to DASA(ESOH)'s signature.]

4.10. OTHER PROPERTY CONDITIONS

The following conditions also exist on the property: _____ **[Briefly describe any other potentially hazardous conditions (non-hazardous waste landfills, hanta virus, past releases of raw sewage, etc.) and explain what action was taken place or what restrictions are necessary to prevent an unacceptable risk to human health and the environment.]**

[Alternate language: There are no other hazardous conditions on the property that present an unacceptable risk to human health and the environment.]

5. ADJACENT PROPERTY CONDITIONS

The following other potentially hazardous conditions exist on adjacent property: _____ **[Briefly describe any potential hazards that exist on adjacent property (e.g., explosive operations, munitions response sites, environmental sites, or other hazardous conditions).]** The presence of these hazards on adjacent property does not present an unacceptable risk to human health and the environment because _____ **[Explain site conditions/protective measures (e.g., lack of migration of contamination, warning signs, fences).]**

[Alternate language: There are no conditions adjacent to the property that present an unacceptable risk to human health and the environment.]

[Editorial note - The decision to list an adjacent hazardous condition should be made on a case-by-case basis depending on the magnitude of the threat and its proximity to the property.]

6. ENVIRONMENTAL REMEDIATION AGREEMENTS

The following environmental orders/agreements are applicable to the property: _____ **[Identify any environmental agreements or orders, e.g., Federal Facility Agreements, RCRA corrective action orders, etc.]** All remediation activities on the property, required by such agreement or order, are completed or in place and operating properly and successfully (See Section 4.1 Environmental Remediation Sites). The deed will include a provision reserving the Army's right to conduct remediation activities (Enclosure _____).

[Alternate language: There are no environmental remediation orders or agreements applicable to the property being transferred. The deed will include a provision reserving the Army's right to conduct remediation activities if necessary in the future (Enclosure _____).]

7. REGULATORY/PUBLIC COORDINATION

The U.S. EPA Region _____, the _____ **[Insert name of State regulator]**, and the public were notified of the initiation of this FOST. Regulatory/public comments received during the public comment period will be reviewed and incorporated, as appropriate. A copy of the regulatory/public comments and the Army Response will be included at Enclosure ____.

[Editorial note – This section should be revised after the public comment period is completed to reflect whether any regulatory/public comments were received and an Army Response was prepared.]

8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The environmental impacts associated with the proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis are documented in the _____ **[Identify NEPA document, e.g., Disposal and Reuse Environmental Assessment or Environmental Impact Statement.]** There were no encumbrances or condition identified in the NEPA analysis as necessary to protect human health or the environmental. **[Alternate language:** The NEPA analysis identified the following encumbrance: _____ **[Describe the NEPA encumbrance and how it will be addressed in the FOST]**

9. FINDING OF SUITABILITY TO TRANSFER

Based on the above information, I conclude that all removal or remedial actions necessary to protect human health and the environment have been taken and the property is transferable under CERCLA section 120(h)(3). In addition, all Department of Defense requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions set forth in the attached Environmental Protection Provisions that shall be included in the deed for the property. The deed will also include the CERCLA 120(h)(3) Notice, Covenant, and Access Provisions and Other Deed Provisions. Finally, the hazardous substance notification (Table 2) shall be included in the deed as required under the CERCLA Section 120(h) and DOD FOST Guidance.

[Alternate language: Based on the information above, I conclude that the Property qualifies as CERCLA §120(h)(4) uncontaminated property and is transferable under that section. In addition, all Department of Defense requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions in the Environmental Protection Provisions that shall be included in the deed for the property. The deed will include the CERCLA 120(h)(4) Notice, Covenant, and Access Provisions and Other Deed Provisions. Whereas no hazardous substances or petroleum products were stored for one year or more, known to have been released, or disposed of on the parcel, a hazardous substance or petroleum notification is not required.]

[Editorial note – The CERCLA §120(h)(4) certification can be used only if there is no evidence of any release or disposal of hazardous substances or petroleum products on the property and the appropriate regulatory agency has concurred with this determination. If there has been no storage, release or disposal of hazardous substances, but a petroleum product has been released

on the property, consult with the appropriate Army lawyer for appropriate covenant determination. Additionally, consult with the appropriate Army lawyer on appropriate language if the transferee is a potentially responsible party (PRP).]

APPROPRIATE SIGNATURE BLOCK

11 Enclosures

Encl 1 -- Site Map of Property

Encl 2 -- Environmental Documentation

Encl 3 -- Table 1 -- Description of Property

Encl 4 -- Table 2 -- Notification of Hazardous Substance Storage, Release, or Disposal

Encl 5 -- Table 3 -- Notification of Petroleum Product Storage, Release, or Disposal

Encl 6 -- Table 4 -- Notification of Munitions and Explosives of Concern (if applicable)

Encl 7 -- CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions

Encl 8 -- Environmental Protection Provisions

Encl 9 -- Statement of MEC Removal (if applicable)

Encl 10 -- Regulatory/Public Comments

Encl 11 -- Army Response

ENCLOSURE 3

TABLE 1 – DESCRIPTION OF PROPERTY

Building Number and Property Description	EBS Parcel Designation	Condition Category	Remedial Actions
Bldg. 1 is 5,000 sq. ft administrative building	5C(1) FEBS	1	None
Bldg. 2 is a 1,000 sq. ft storage building..	12(4)HS/HR	1	Bulk chemical solutions were stored in Bldg. 2 in excess of 40 CFR 373 reportable quantities from 1980 to 1996. There were no reported spills or other evidence of hazardous substance releases.
Bldg. 3 is a former gas station with 10,000-gallon UST	57(7)PS/PR(P)	2	A 10,000 gallon UST was removed along with some petroleum contaminated soils on 10 Sep 97. A closure report was submitted to the State in Jan 00. The State determined that no further action is necessary in letter dated 22 Feb 00.
Bldg. 5 is a 1,530 sq. ft building that was used for radio repair operations	12(3)HS/HR	3	There were minor releases of battery acid associated with radio repair operations in Bldg. 170. These releases were remediated at the time of the spill. The performance of industrial and/or commercial operations at this site in accordance with the Deed Restrictions will not pose an unacceptable risk to human health.
Bldg. 6 is a 400 sq. ft former supply building including adjacent tank farm	12(3)HS/HR	4	TCE solvent was stored in 1,000 gallon AST between 1959 and 1992. In 1992, the tank farm ASTs and contaminated soils were removed in coordination with state regulators. The performance of industrial and/or commercial operations at this site in accordance with the Deed Restrictions will not pose an unacceptable risk to human health.
Operable Unit 10 Area	No Parcel #	4	The OU 10 area was contaminated with Cobalt-60. In 1983, the site was remediated with the removal of soil and vegetation over a 3,000 square foot area. A Radiological Survey Report was prepared and no additional radiation above background was found and the site was released for unrestricted use.

Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred. (including no migration of these substances from adjacent areas)

Category 2: Areas where only release or disposal of petroleum products has occurred.

Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

ENCLOSURE 4

TABLE 2 – NOTIFICATION OF HAZARDOUS SUBSTANCE STORAGE, RELEASE OR DISPOSAL

Building Number	Name of Hazardous Substance(s)	Date of Storage, Release, or Disposal	Remedial Actions
Bldg. 2.	Hydrochloric acid; (7647010,hydrogen chloride); Sodium Hydroxide (1310732); Chrome plating treatment sludge (F006,D007); trichloroethylene (79016,trichloroethene); Product Paint and thinners.	1980 to 1996	Bulk chemical solutions were stored in Bldg. 2 in excess of 40 CFR 373 reportable quantities from 1980 to 1996. There were no reported spills or other evidence of hazardous substance releases.
Bldg. 6	Trichloroethylene (TCE)	1959 to 1992	TCE solvent was stored in 1,000 gallon AST between 1959 and 1992. In 1992, the tank farm AST's and contaminated soils were removed in coordination with state regulators. The performance of industrial and/or commercial operations at this site in accordance with the Deed Restrictions will not pose an unacceptable risk to human health.
<p>* The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or 'Superfund') 42 U.S.C. §9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance's CERCLA reportable quantity (which ever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 CFR Part 373.</p>			

ENCLOSURE 5

TABLE 3 – NOTIFICATION OF PETROLEUM PRODUCT STORAGE, RELEASE, OR DISPOSAL

Building Number	Name of Petroleum Product(s)	Date of Storage, Release, or Disposal	Remedial Actions
Bldg. 3	Gasoline	1974 to 1997	A 10,000 gallon UST was removed along with some petroleum contaminated soils on September 10, 1997. A closure report was submitted to the State in January 2000. The State determined that no further action is necessary in letter dated 22 Feb 2000.

ENCLOSURE 6

TABLE 4 – NOTIFICATION OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)*

Site	Type of MEC	Date of MEC Activity	Munitions Response Actions
Range Test Area #1	Unexploded Ordnance (UXO)	1940 – 1977	Range Test Area #1 is a 2 acre, former function test range for military munitions. In Apr - May 01, a munitions response was performed at this former range. During this response, 55 UXO items (37mm projectiles) were recovered and destroyed. Additionally, 49 inert items munitions and 758 pounds of scrap metal were recovered and dispositioned. (See Range Test Area #1 Munitions Response Report dated _____.)
Open Burning(OB)/ Open Detonation (OD) Ground #1	Discard Military Munitions (DMM)	1940 – 1977	The OB/OD Ground #1 was used to OD military munitions. In Aug 04, a munitions response was completed on OB/OD Ground #1. A total of 194 DMM (e.g., fuses and partially detonated munitions) were removed from the Property. (See OB/OD Ground #1 Muntions Response Report dated _____.)
Bldg. Nos. 10, 11, and 12	Munitions Constituents (MC)	1940 – 1977	Buildings 10, 11, and 12 were used for the production of military munitions. were determined to have MC (residual explosives) present in high enough concentrations to present an explosives hazard In Nov 02, they were processed (e.g., burned, disassembled) burned, disassembled) per a DDESB-approved ESS. (See Buildings 9, 14, and 15 Munitions Response Report dated _____.)

***Munitions and Explosives of Concern (MEC).** This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks, means: (A) Unexploded Ordnance (UXO), as defined in 10 §101(e)(5); (B) Discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

ENCLOSURE 7

CERCLA NOTICE, COVENANT, AND ACCESS PROVISIONS
AND OTHER DEED PROVISIONS

The following CERCLA Notice, Covenant, and Access Provisions, along with the Other Deed Provisions, will be placed in the deed in a substantially similar form to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

[Editorial Note – The below CERCLA 120(h)(3) Notice and Covenant provisions should be used in all deeds for property having storage for more than a year, release, or disposal of hazardous substances in excess of reportable quantities.]

1. CERCLA NOTICE

For the Property, the Grantor provides the following notice, description, and covenant:

A. Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in Exhibit _____ **[The FOST Table 2 – Hazardous Substance, Storage, Release and Disposal should be included as a deed exhibit.]**, attached hereto and made a part hereof. Additional information regarding the storage, release, and disposal of hazardous substances on the property has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the following documents: _____ **[List additional documents, e.g., the EBS, FOST, etc.]**

B. Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the property is provided in Exhibit _____ **[The FOST Table 2 – Hazardous Substance, Storage, Release and Disposal should be included as an exhibit in the final deed]**, attached hereto and made a part hereof. Additional information regarding the remedial action taken, if any, has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the following documents: _____ **[List additional documents, e.g., the Record of Decision, Decision Document, etc.]**

2. CERCLA COVENANT

Pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(ii) and (B)), the United States warrants that -

A. All remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the property has been taken before the date of this deed, and

B. Any additional remedial action found to be necessary after the date of this deed shall be conducted by the United States.

This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, Grantee shall not be considered a potentially responsible party solely due to the presence of a hazardous substance remaining on the property on the date of this instrument, provided that Grantee has not caused or contributed to a release of such hazardous substance.”

OR

[CERCLA 120(h)(4) Covenant language – The below CERCLA Covenant provision should be used in all deeds for property that did NOT have storage for more than a year, release, or disposal of hazardous substances in excess of reportable quantities.]

1. CERCLA COVENANT

Pursuant to section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(D)(i)), the United States warrants that any response action or corrective action found to be necessary after the date of this deed for hazardous substances existing on the property prior to the date of this deed shall be conducted by the United States. This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, Grantee shall not be considered a potentially responsible party solely due to a hazardous substance remaining on the property on the date of this instrument, provided that Grantee has not caused or contributed to a release of such hazardous substance or petroleum product or its derivatives.

[Editorial Note - Insert below provisions in all deeds. Renumber as appropriate.]

3. RIGHT OF ACCESS

A. Pursuant to section [120(h)(3)(A)(iii)] [120(h)(4)(D)(ii)] [**Select appropriate citation**] of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §[9620(h)(3)(A)(iii)] [9620(h)(D)(ii)] [**Select appropriate citation**]), the United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the property, to enter upon the property in any case in which an environmental response action or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response action or corrective action is on the Property or on adjoining or nearby

lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

B. In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this covenant, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means, but without significant additional costs to the United States, to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

C. In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this covenant. In addition, the Grantee, its successors and assigns, shall not interfere with any response action or corrective action conducted by the Grantor on the Property.

4. "AS IS"

A. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

B. No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos, lead-based paint, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

C. Nothing in this “As Is” provision will be construed to modify or negate the Grantor’s obligation under the CERCLA Covenant or any other statutory obligations.

5. HOLD HARMLESS

A. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed by the Grantee, its successors and assigns, and (2) any and all any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.

B. The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property.

C. Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor’s obligation under the CERCLA Covenant or any other statutory obligations.

6. POST-TRANSFER DISCOVERY OF CONTAMINATION

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor’s activities, use, or ownership of the Property. If the Grantee, it successors or assigns believe the discovered hazardous substance is due to Grantor’s activities, use or ownership of the Property, Grantee will immediately secure the site and notify the Grantor of the existence of the hazardous substances, and Grantee will not further disturb such hazardous substances without the written permission of the Grantor.

B. Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor’s responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor’s indemnification obligations under applicable laws.

7. ENVIRONMENTAL PROTECTION PROVISIONS

The Environmental Protection Provisions are at Exhibit _____, which is attached hereto and made a part hereof. The Grantee shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the Environmental Protection Provisions contained herein, and shall require the inclusion of the Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.

[Editorial note - The EPPs will be included as a deed exhibit in order to streamline the deed language. It will not diminish the enforceability or legal significance of the EPPs.]

ENCLOSURE 8

ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be attached, in a substantially similar form, as an exhibit to the deed and be incorporated therein by reference in order to ensure protection of human health and the environment.

1. FEDERAL FACILITIES AGREEMENT

The Grantor acknowledges that the _____ **[Name of Installation]** has been identified as a National Priorities List (NPL) site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the Grantor has provided it with a copy of the _____ **[Installation]** Federal Facility Agreement (FFA) dated _____. For so long as the Property remains subject to the FFA, the Grantee, its successors and assigns, agree that they will not interfere with United States Department of the Army activities required by the FFA. In addition, should any conflict arise between the FFA and any amendment thereto and the deed provisions, the FFA provisions will take precedence. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with their use of the Property.

[Editorial Note – The FFA provision should be used in transfers involving properties on the National Priorities List. If the Property is subject to a non-CERCLA cleanup agreement (e.g., a RCRA Corrective Action Order), consult with the appropriate Army lawyer about including a non-FFA cleanup agreement notice provision.]

2. LAND USE RESTRICTIONS

A. The United States Department of the Army has undertaken careful environmental study of the Property and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. The Grantee, its successors or assigns, shall not undertake nor allow any activity on or use of the property that would violate the land use restrictions contained herein.

(1) Residential Use Restriction. The Grantee, its successors and assigns, shall use the Property solely for commercial or industrial activities and not for residential purposes. For purposes of this provision, residential use includes, but is not limited to, single family or multi-family residences; child care facilities; and nursing home or assisted living facilities; and any type of educational purpose for children/young adults in grades kindergarten through 12.

(2) Groundwater Restriction. Grantee is hereby informed and acknowledges that the groundwater under Property has _____. **[Briefly describe condition of the groundwater.]** The Grantee, its successors and assigns, shall not to access or use ground water underlying the Property for any purpose without the prior written approval of United States

Department of the Army and the _____ **[List appropriate regulator(s).]** For the purpose of this restriction, "ground water" shall have the same meaning as in section 101(12) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(3) Landfill Restriction. The Property has three non-hazardous waste landfills (“Non-Hazardous Waste Landfill Parcels”). The Grantee, its successors and assigns, shall not conduct or permit others to conduct any excavation activities (i.e. digging, drilling, or any other excavation or disturbance of the land surface or subsurface) or other activities, which may damage the Non-Hazardous Waste Landfill Parcels soil cover and liners. A site map depicting the location of the Non-Hazardous Waste Landfill Parcels is provided as Exhibit 1 (Site Map of Property).

B. Modifying Restrictions. Nothing contained herein shall preclude the Grantee, its successors or assigns, from undertaking, in accordance with applicable laws and regulations and without any cost to the Grantor, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Grantee shall consult with and obtain the approval of the Grantor, and, as appropriate, the State or Federal regulators, or the local authorities. Upon the Grantee’s obtaining the approval of the Grantor and, as appropriate, state or federal regulators, or local authorities, the Grantor agrees to record an amendment hereto. This recordation shall be the responsibility of the Grantee and at no additional cost to the Grantor.

C. Submissions. The Grantee, its successors and assigns, shall submit any requests to modifications to the above restrictions to Grantor and _____ **[List appropriate regulator(s)]**, by first class mail, postage prepaid, addressed as follows:

- a. Grantor - _____ **[Provide mailing address.]**
- b. EPA/State Regulator - _____ **[Provide mailing address.]**

[Editorial Note - The actual deed language will depend on the site specific conditions. Therefore, you are encouraged to consult with the appropriate Army lawyer when drafting land use restriction language.]

3. NOTICE OF THE POTENTIAL PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

A. The Grantee is hereby notified that due to the former use of the Property as a military installation, the Property may contain munitions and explosives of concern (MEC). The term MEC means specific categories of military munitions that may pose unique explosives safety risks and includes: (1) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (2) Discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (3) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.)

B. The Property was previously used _____ **[Describe past munitions-related activities (e.g., used as an operational range for live-fire training or testing, used for open burning (OB) or open detonation (OD) of munitions, or used as a munitions operating facility for production, renovation, etc.)]** In _____, a munitions response was conducted. _____ **[Describe munitions response (e.g., surface removal, subsurface removal to detected depth); any MEC discovered (e.g., 24, 81 mm mortar high explosive projectile warheads, 3 fuzes, 3 practice bombs; the disposition of discovered MEC (e.g., blown in place, OD in consolidated shot, destroyed using contained detonation).]** A summary of MEC discovered on the property is provided in Exhibit __ **[Include FOST Table 4 – Notification of Munitions and Explosives of Concern (MEC) as a deed exhibit]**. A summary of the map depicting the location of munitions response site is provided at Deed Exhibit _____.

C. The Grantor represents that, to the best of its knowledge, no MEC is currently present on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the Local Police Department so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations.

D. Easement and Access Rights.

(1) The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

(2) In exercising this easement and right of access, the Grantor shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

(3) In exercising this easement and right of access, neither the Grantee nor its successors and assigns, as the case maybe, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants

pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Grantor on the Property.

E. The Grantee acknowledges receipt of the _____ **[List the Statement of MEC Removal and any other pertinent reports.]**

[Editorial Note - The actual deed language will depend on the site specific conditions. Therefore, you are encouraged to consult with the appropriate Army lawyer when drafting land use restriction language.]

4. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

[Editorial Note - The below ACM provision should be used if all friable asbestos has been removed or encapsulated and only non-friable asbestos or asbestos-containing material (“ACM”) remains on the Property.]

A. The Grantee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material (“ACM”) has been found on the Property. The Property may contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency have determined that such unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Grantee agrees to be responsible for any remediation or abatement of asbestos found to be necessary on the Property to include ACM in or on buried pipelines that may be required under applicable law or regulation.

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.

OR

4. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

[Alternate ACM Language - State the following, if friable asbestos remains in buildings on the property at the time of transfer.]

A. The Grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos containing material "ACM" has been found on the Property. The Property may also contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain friable and non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency have determined that unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

B. The following building(s) on the Property has (have) been determined to contain friable asbestos: _____. The Grantee agrees to undertake any and all asbestos abatement or remediation in the aforementioned buildings that may be required under applicable law or regulation at no expense to the Grantor. The Grantor has agreed to transfer said buildings to the Grantee, prior to remediation or abatement of asbestos hazards, in reliance upon the Grantee's express representation and covenant to perform the required asbestos abatement or remediation of these buildings.

C. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Grantee agrees to be responsible for any future remediation or abatement of asbestos found to be necessary on the Property to include ACM in or on buried pipelines that may be required under applicable law or regulation.

D. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.

5. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that there is a risk of exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

B. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Property, as defined under 24 Code of Federal Regulations Part 35, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement

requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any lead-based paint hazards or concerns.

6. PCB NOTIFICATION AND COVENANT

A. The Grantee is hereby informed and does acknowledge that equipment containing polychlorinated biphenyls (PCBs) exists on the Property to be conveyed, described as follows: _____ . All PCB-containing equipment has been properly labeled in accordance with applicable laws and regulations. Any PCB contamination or spills related to such equipment have been properly remediated prior to conveyance.

B. The Grantee covenants and agrees that its continued possession, use and management of any PCBs and PCB-containing equipment will be in compliance with all applicable laws relating to PCBs and PCB-containing equipment. The Grantee agrees to be responsible for any future remediation of PCB contamination from PCB-containing equipment found to be necessary on the Property.

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to the presence of PCBs and PCB-containing equipment and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any PCB hazards or concerns.

[Editorial Note – A PCB Notice EPP will generally not be required unless the property has significant PCB issues. Please consult with the appropriate Army lawyer if you believe that a PCB Notice EPP is necessary.]