

Draft

FINDING OF SUITABILITY TO LEASE

(FOSL)

Fort Monmouth, New Jersey

**Carve Out Parcel 16
FTMM-22 Lime Pit Myer Center**

May 2021

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Carve Out Parcel 16, FTMM-22 Lime Pit Myer Center

1. PURPOSE

The purpose of this Finding of Suitability to Lease (FOSL) is to document, consistent with Department of Defense (DoD) policy, the environmental suitability for lease of former Fort Monmouth (FTMM), Charles Wood Area, Carve Out Parcel 16, FTMM-22 Lime Pit Myer Center (see Enclosure 1 – Figure 1 Site Map) to Fort Monmouth Economic Revitalization Authority (FMERA) for an economic development lease to support the redevelopment of the adjacent Myer Center property. The FOSL includes the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment during the lease.

2. BACKGROUND AND PROPERTY DESCRIPTION

This FOSL covers the portion of FTMM known as Carve Out Parcel 16, FTMM-22 Myer Center Lime Pit. It is the former location of a treatment system that served the adjacent former Myer Center building. The parcel is approximately .285 acres (see Figure 1, Enclosure 1) (“Property”).

The primary mission of FTMM was to provide command, administrative, and logistical support for Headquarters, U.S. Army Communications and Electronics Command (CECOM). CECOM is a major subordinate command of the U.S. Army Materiel Command (AMC) and was the host activity. FTMM is divided into three areas the Main Post (MP), the Charles Woods Area (CWA) and the Evans Area (EA).

FTMM is located in the central-eastern portion of New Jersey in Monmouth County, approximately 45 miles south of New York City, 70 miles northeast of Philadelphia, and 40 miles east of Trenton. The Atlantic Ocean is approximately 3 miles to the east. FTMM falls within the Boroughs of Eatontown, Oceanport, and Tinton Falls. The Property is located in the Borough of Tinton Falls.

The Property consists of open space within a parking lot area that formerly served the former Myer Center Building. The Property is intended to be leased to FMERA, which will then sublease the Property to Robert Wood Johnson Barnabas Health (RWJBH) who is developing the adjacent property for use as a medical facility. A site map of the property is attached (Figure 1, Enclosure 1).

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the Property was made based upon the following:

- U.S. Army BRAC 2005 Environmental Condition of Property Report Fort Monmouth, Monmouth County, New Jersey, Final, 29 January 2007.
- U.S. Army, Environmental Condition of Property Report Update, Fort Monmouth, New Jersey, Phase 1 Properties, March 2013.
- U.S. Army, Record of Environmental Consideration, Parcel 16, FTMM-22 Lime Pit, March 23, 2021.
- U.S. Army, Environmental Condition of Property Report Update, Fort Monmouth, New Jersey, Parcel 16, May 18 2021.

The information provided in this FOSL is a result of a complete search of agency files for the development and execution of the environmental actions at Parcel 16. A complete list of documents providing information on environmental conditions of the Property is attached (Enclosure 2).

4. ENVIRONMENTAL CONDITION OF PROPERTY

The DoD Environmental Condition of Property (ECP) category for the Property is listed as ECP Category 5 based on the U.S. Army BRAC 2005 Environmental Condition of Property Report, Fort Monmouth, Monmouth County New Jersey, Final, January 29, 2007 (Phase 1 ECP Report) and the ECP Update dated April, 2021 (see Enclosure 1, Figure 1 ECP Update Parcel Map Fort Monmouth, Phase 1 Property) and the REC dated March 23 2021. Category 5 is defined as “an area or parcel of real property where release, disposal or migration, or some combination thereof, of hazardous substances has occurred, and removal or remedial actions, or both, are underway, but all required actions have not yet been taken”.

4.1 Environmental Remediation Sites

The Property encompasses the remainder of the Installation Restoration Program (IRP) site FTMM-22 Lime Pit. The area immediately surrounding the current Parcel 16 footprint associated with FTMM-22 Lime Pit was previously remediated and is documented in the March 2013 ECP and as such was transferred with the Phase 1 Properties. The remaining property (Parcel 16 Carve Out) has undergone further investigation and remedial action, including removal of the actual lime pit structure; removal of surrounding contaminated soils; conduct of a pilot study to remediate residual groundwater contamination using in-situ chemical oxidation treatment injection of RegenOx; and on-going groundwater sampling. The results of the pilot study (presented in Pilot Test Report, RegenOx Injections at Site FTMM-22) did not show sufficient reduction in contamination to indicate further in-situ remediation was warranted at this time. In accordance with the Record of Decision (ROD), the Army plans to utilize MNA along with a groundwater use restriction, supported by the New Jersey Department of Environment Protection (NJDEP) designation of a ground water Classification Exception Area (CEA), as the final remedy for groundwater. The lease will contain the proper provisions to allow Army access to continue with remediation and investigation work, and also land use restrictions to ensure protection of human health.

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 specific in 40 CFR Part 373. All hazardous substance storage operations have been terminated on the Property. Hazardous substances were released on the property in excess of the 40 CFR 373 reportable quantities at the following sites: FTMM-22 Lime Pit CW1. The release or disposal of these hazardous substances was remediated at the time of release and subsequently as part of the Army's responsibilities to comply with CERCLA at Army installations. A summary of the area in which the hazardous substance activity occurred is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 4). The lime pit was designed to treat acid wastes generated inside the former Myer Center building by means of lime chips which were placed inside the former lime pit structure. As part of operations at the Myer Center, solvents were discharged into the lime pit and an undefined amount of solvent wastes were released into nearby soils and groundwater. VOCs released included primarily trichloroethylene and its degradation products.

4.3 Petroleum and Petroleum Products

4.3.1 Underground and Above-Ground Storage Tanks (UST/AST)

Current UST/AST Sites

There are currently no known ASTs or USTs on the Property.

Former Underground and Above-Ground Storage Tanks

There were no known ASTs or USTs previously existing on the Property.

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

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)

There were no potential PCB releases associated with the Property.

4.5 Asbestos

There is no asbestos associated with the Property (no buildings or structures existed on the Property).

4.6 Lead-Based Paint (LBP)

There is no lead based paint associated with the property (no buildings or structures existed on the property).

4.7 Radiological Materials

There is no evidence that radioactive material or sources were stored or used on the Property.

4.8 Radon

Radon surveys were conducted in 1991 by the Directorate of Engineering and Housing's Environmental Office as part of the Army's Radon Reduction Program. The survey was conducted for all of FTMM. Radon detectors were deployed in all structures designated as priority one buildings (daycare centers, hospitals, schools and living areas). The radon levels measured in all detectors were less than 4 picocuries per liter (pCi/L). Based on the USEPA criteria for radon 4 pCi/L, radon levels at FTMM do not pose a health risk and no further action (NFA) was deemed required for radon.

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.

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.

4.10 Other Property Conditions

No other conditions have been indicated to identify any Recognized Environmental Conditions.

5. ADJACENT PROPERTY CONDITIONS

The immediately surrounding property has been determined to be suitable for transfer by the Army and was transferred to FMERA. Adjacent property conditions are acceptable for the purposes of the lease.

6. ENVIRONMENTAL REMEDIATION AGREEMENTS

There are no environmental remediation agreements specifically applicable to the Property. The lease will include a provision reserving the Army's right to conduct remediation activities if necessary in the future (Enclosure 3).

7. REGULATORY/PUBLIC COORDINATION

The NJDEP and the public were notified of the initiation of this FOSL. This FOSL is being made available for review at www.fortmonmouthrecords.com or, subject to COVID-19 restrictions, at the Fort Monmouth Environmental Restoration Public Information Repository (the Administrative Record) at the following location: Monmouth County Library, Eastern Branch, 1001 Route 35, Shrewsbury, NJ Phone: (732) 683-8980. Comments received will be addressed and the FOSL updated as appropriate. A copy of the regulatory and public comments and the Army responses will be included as an Enclosure to the Final FOSL.

8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The environmental impacts associated with the lease of the Property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis are documented in the Final Environmental Assessment of the Implementation of the Base Realignment and Closure at Fort Monmouth, New Jersey, March 2009. The use covered by the leasing of the Property is consistent with its current use and has been evaluated in the EA. The EA concluded that the proposed action would have no significant adverse direct, indirect or cumulative effects on the quality of the natural or human environment. There were no encumbrances or conditions identified in the NEPA analysis as necessary to protect human health or the environment.

9. FINDING OF SUITABILITY TO LEASE

Based on the above information, I conclude that the Property is suitable for lease for the intended use for open space (adjacent to the current re-development at the former Myer Center), the lease is consistent with the protection of human health and the environment, and there are adequate assurances that the United States will take any additional remedial action found to be necessary as a result of Army activities on the Property. In addition, all DoD requirements to reach a finding of suitability to lease have been met, subject to the terms and conditions set forth in the attached Environmental Protection Provisions, which will be included in the lease for the Property. The lease will also include Access Provisions (Enclosure 2), enabling access so that the Army may continue to remediate the Property.

Approved by:

Richard C. Ramsdell
Chief, BRAC NCR Branch (DAIN-ISE)
Office of the Deputy Chief of Staff, G-9

7 Enclosures

Encl 1 -- Site Maps

Encl 2 -- Environmental Documentation

Encl 3 -- Table 1 Property Description

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

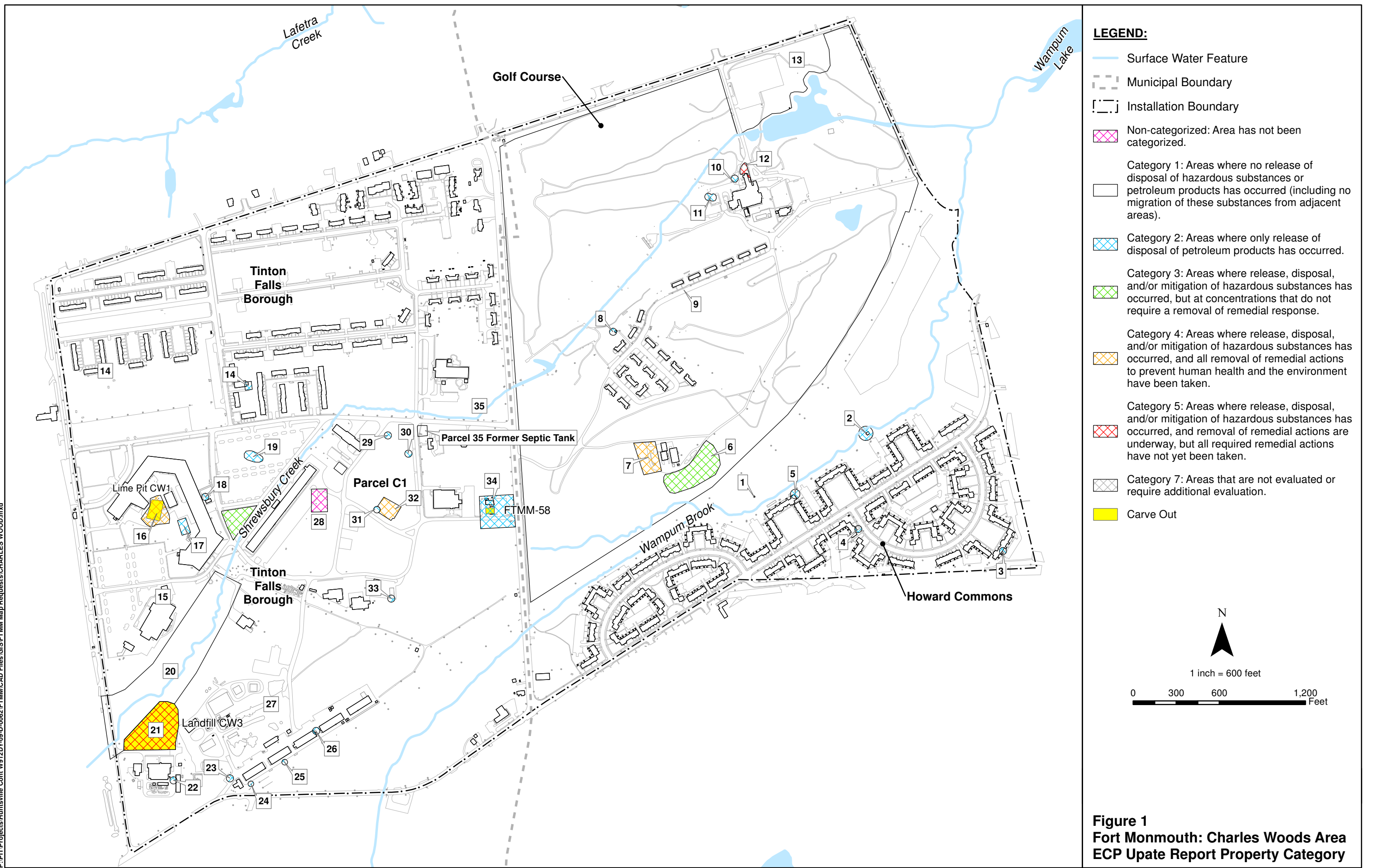
Encl 5 -- Access Provisions and Other Lease Provisions

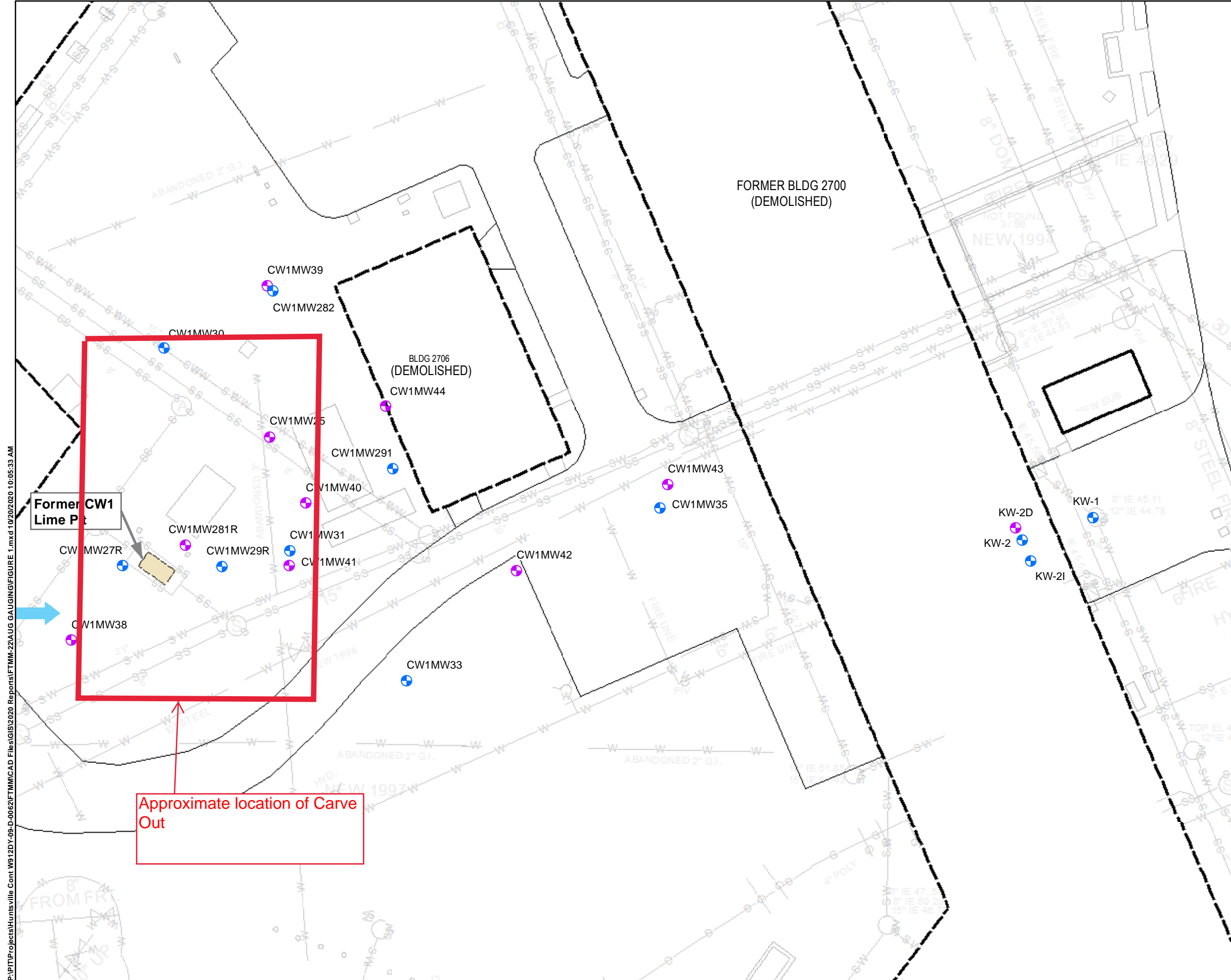
Encl 6 -- Environmental Protection Provisions

Encl 7 -- Response to Regulator Comments

ENCLOSURE 1

Site Maps

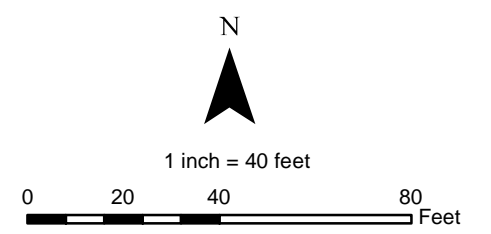




LEGEND:

- Shallow Monitoring Well
- Deep Monitoring Well
- W Water Line
- S Sanitary Sewer Line
- SW Storm Sewer Line
- G Gas Line
- Former CW1 Lime Pit

P:\P\Projects\Huntsville Cont W912DY-09-P-0062\FTMMCAD Files\GIS\2020 Reports\FTMM-22\AUG GAUGING\FIGURE 1.mxd 10/20/2020 10:05:33 AM



Source: FTMM Supplied CAD

PARSONS 401 Diamond Drive NW, Huntsville AL		Fort Monmouth New Jersey	
MONITORING WELL LOCATIONS			
CREATED BY: RR	REVIEWED BY: JC	DATE: OCT. 2020	FIGURE NUMBER: FIGURE 2
PROJECT NUMBER: 110016.03100	FILE:		

ENCLOSURE 2

1. U.S. Army BRAC 2005 Environmental Condition of Property Report Fort Monmouth, Monmouth County, New Jersey, Final, 29 January 2007.
2. Fort Monmouth Reuse and Redevelopment Plan, Final Plan, 22 August 2008.
3. U.S. Army BRAC 2005 Site Investigation Report Fort Monmouth, Final, 21 July 2008.
4. Baseline Ecological Evaluation (BEE) Report, June 2012.
5. U.S. Army, Environmental Condition of Property Report Update, Fort Monmouth, New Jersey, Phase 1 Properties, March 2013.
6. Remedial Investigation/Feasibility Study Report for Site FTMM-22, Fort Monmouth, Oceanport, Monmouth County, New Jersey, Parsons, June 2017
7. Record of Decision for FTMM-22 at Fort Monmouth, Oceanport, Monmouth County, New Jersey, September 2018.
8. NJDEP Letter to Army: Concurrence on Fort Monmouth, Record of Decision for FTMM-22, Oceanport, Monmouth County, October 16, 2018.
9. Remedial Action Completion Report for the FTMM-22 Lime Pit Soils, Fort Monmouth, Oceanport, Monmouth County, New Jersey, Parsons, May 2019.
10. NJDEP Letter to Army: No Further Action, Areas of Concern, FTMM-22, Lime Pit Soils Only, Monmouth County, New Jersey, June 18, 2019.
11. Pilot Test Report, RegenOx Injections at Site FTMM-22, March 2019 and January 2020, Oceanport, Monmouth County, New Jersey, Parsons, June 2020.
12. August 2020, Groundwater Sampling Report for FTMM-22, Fort Monmouth, Monmouth County New Jersey, October 2020.
13. NJDEP Letter to Army: FTMM-22 Pilot Test Report for RegenOx Injections and Groundwater Sampling Report, Monmouth County, January 28, 2021
14. U.S. Army, Record of Environmental Consideration, Parcel 16, FTMM-22 Lime Pit, March 23, 2021.
15. U.S. Army, Environmental Condition of Property Report Update, Fort Monmouth, New Jersey, Parcel 16, May 18, 2021.

ENCLOSURE 3

TABLE 1 – DESCRIPTION OF PROPERTY

Building Number and Property Description	ECP Parcel Designation	Condition Category	Remedial Actions¹
Parking Area and Open Space at Parcel 16 adjacent to former Myer Center Building	Parcel 16	5	The Property encompasses the remainder of the Installation Restoration Program (IRP) site FTMM-22 Lime Pit. The area immediately surrounding the current Parcel 16 footprint associated with FTMM-22 Lime Pit was previously remediated and is documented in the March 2013 ECP and as such was transferred with the Phase 1 Properties. The remaining property (Parcel 16 Carve Out) has undergone further investigation and remedial action, including removal of the actual lime pit structure; removal of surrounding contaminated soils; conduct of a pilot study to remediate residual groundwater contamination using in-situ chemical oxidation treatment injection of RegenOx; and on-going groundwater sampling. The results of the pilot study (presented in Pilot Test Report, RegenOx Injections at Site FTMM-22) did not show sufficient reduction in contamination to indicate further in-situ remediation was warranted at this time. In accordance with the Record of Decision (ROD), the Army plans to utilize MNA along with a groundwater use restriction, supported by the New Jersey Department of Environment Protection (NJDEP) designation of a ground water Classification Exception Area (CEA), as the final remedy for groundwater.

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.

Category 5: Areas where release, disposal, and/or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken.

Category 7: Areas that are not evaluated or require additional evaluation.

ENCLOSURE 4

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

Building Number	Name of Hazardous Substance(s)	Date of Storage, Release, or Disposal	Remedial Actions
<p>Parking Area and Open Space at Parcel 16 adjacent to former Myer Center Building</p>	<p>Volatile Organic Compounds (trichloroethylene)</p>	<p>Unknown</p>	<p>The area immediately surrounding the current Parcel 16 footprint associated with FTMM-22 Lime Pit was previously remediated and is documented in the March 2013 ECP and as such was transferred with the Phase 1 Properties. The remaining property (Parcel 16 Carve Out) has undergone further investigation and remedial action, including removal of the actual lime pit structure; removal of surrounding contaminated soils; conduct of a pilot study to remediate residual groundwater contamination using in-situ chemical oxidation treatment injection of RegenOx; and on-going groundwater sampling. The results of the pilot study (presented in Pilot Test Report, RegenOx Injections at Site FTMM-22) did not show sufficient reduction in contamination to indicate further in-situ remediation was warranted at this time. In accordance with the Record of Decision (ROD), the Army plans to utilize MNA along with a groundwater use restriction, supported by the New Jersey Department of Environment Protection (NJDEP) designation of a ground water Classification Exception Area (CEA), as the final remedy for groundwater.</p>

ENCLOSURE 5

ACCESS PROVISIONS AND OTHER LEASE PROVISIONS

The following Access and Other Lease Provisions will be placed in the lease 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.

1. RIGHT OF ACCESS

A. The United States retains and reserves a perpetual and assignable 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 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 right of access shall be binding on the Lessee and its successors and assigns and shall run with the land.

B. In exercising such right of access, the United States shall provide the Lessee 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 clause, 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 Lessee's and the Lessee's successors' and assigns' quiet enjoyment of the property. At the completion of work, the work site shall be reasonably restored. Such 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 Lessee nor its successors and assigns, for the exercise of the right of access hereby retained and reserved by the United States.

C. In exercising such right of access, neither the Lessee 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 clause. Provided, however, that nothing in this paragraph shall be considered as a waiver by the Lessee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act. In addition, the Lessee, its successors and assigns, shall not interfere with any response action or corrective action conducted by the Lessor on the Property.

2. “AS IS”

A. The Lessee 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 Lessee understands and agrees that the Property and any part thereof is offered “AS IS” without any representation, warranty, or guarantee by the Army 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 Lessee, 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 Lessee 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 lead-based paint, or other conditions on the Property. The failure of the Lessee 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 Army’s obligation under CERCLA or any other statutory obligations.

3. HOLD HARMLESS

A. To the extent authorized by New Jersey law, the Lessee, its successors and assigns, covenant and agree to indemnify and hold harmless the Army, 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 Lease by the Lessee, its successors and assigns; and (2) 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 lease.

B. The Lessee, its successors and assigns, covenant and agree that the Army shall not be responsible for any costs associated with modification or termination of the Notices, Use Restrictions, and Restrictive Covenants in this Lease, 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 Army’s obligation under CERCLA or any other statutory obligations.

ENCLOSURE 6

ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be placed, in a substantially similar form, in the lease to ensure that there will be no unacceptable risk to human health and the environment and to preclude any interference with ongoing or completed remediation activities at Fort Monmouth.

1. USE OF THE PROPERTY

The sole purpose, for which premises and improvements thereon may be used, absent written approval from the government for any other use, is to provide open space and access to adjacent property redevelopment activities.

2. SUBSEQUENT TRANSFERS

The Lessee may sublease the Leased Premises (the Property), so long as the Lessee remains primarily liable for performance of all the obligations of Lessee hereunder. The Lessee shall neither transfer nor assign this lease or any interest therein or any property on the leased premises, nor sublet the leased premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without the prior written notice to the Army. Every lease or sublease shall contain the environmental protection provisions contained herein and within Paragraphs ___ of this Lease.

3. REGULATORY OR ENVIRONMENTAL PERMITS

The Lessee shall be solely responsible for obtaining at its own cost and expense any regulatory or environmental permits required for their operation under the lease, independent of any existing Fort Monmouth permits. The Lessee shall also be required to obtain its own EPA Identification Number if applicable.

4. LESSEE COMPLIANCE

The Lessee shall comply with all lawful statutes, regulations, permits, or orders affecting the activity hereby authorized when such are issued by the EPA ; the New Jersey Department of Environmental Protection (NJDEP); or any other Federal, State, interstate, or local government agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased premises by the Lessee or any sub-lessee is prohibited.

5. INTERFERENCE WITH ON-GOING RESTORATION

The Lessee shall not disrupt, inflict damage, obstruct, or impede on-going environmental restoration work on the leased premises or anywhere else on Fort Monmouth. To the extent authorized by New Jersey State law, the Lessee shall indemnify the Army for any costs incurred

as a result of Lessee's breach of this provision. Additionally, should any activities of the Lessee or Sub-lessee cause additional or contribute to any existing contamination on the leased premises or anywhere else on Fort Monmouth, the Lessee and/or Sub-lessee shall be jointly and severally liable for such additional contamination.

6. LESSOR ACCESS CLAUSE

The Army's rights under a lease specifically include the right for Army officials to inspect, upon reasonable notice, the leased premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Army is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Army normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the leased premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim against the United States or any officer, agent, employee, or contractor thereof on account of any entries, except as may be authorized under the Federal Tort Claims Act or other applicable law.

7. ENVIRONMENTAL REMEDIATION AGREEMENT

There are no environmental remediation agreements specifically applicable to the Property.

8. LESSEE COMPLIANCE DURING RESPONSE OR CORRECTIVE ACTION

The Lessee will agree to comply with the provisions of the appropriate health or safety plan in effect during the course of any of the above-described actions. Any inspection, survey, investigation, or other corrective or response action will, to the extent practicable, be coordinated with representatives designated by the Lessee or any Sub-lessees. The Lessee or Sub-lessees shall have no claim, on account of such entries, against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee and any Sub-lessees shall comply with all the applicable Federal, State and Local Occupational Safety & Health Regulations.

9. ENVIRONMENTAL COMPLIANCE PLANS

The Lessee, either directly or through their Sub-lessee, shall submit to the Army, and maintain thereafter, an Environmental Compliance Plan which describes, in detail, the program for environmental management and method of compliance, by the user of any portion of the leased premises, whether Lessee, with all Army, Federal, State, and local laws and regulations for the use, management, generation, storage, treatment, and disposal of all hazardous waste, hazardous materials, and hazardous substances. Each Environmental Compliance Plan for a portion of the leased premises, or request for waiver of the requirement for a plan due to the non-hazardous nature of the proposed use, must be submitted and approved in writing by the Army prior to occupancy of the intended portion of the leased premises. Thereafter, each such Environmental Compliance Plan shall be incorporated in the lease, and shall be included as an exhibit in the relevant sublease(s). The Lessee will be responsible for the overall compliance of

its operations. The Lessee will be responsible for ensuring the preparation of all documents, records, and reports associated with the environmental compliance of its operation. The Lessee will be responsible for ensuring the preparation of all documents, records, and reports associated with the environmental compliance of its operation. No liability or responsibility shall attach to Fort Monmouth or the Army as a result of the Army's review and approval of the Environmental Compliance Plan under this paragraph.

The Lessee further agrees that in the event of any assignment or sublease of the leased premises, it shall provide to the NJDEP a copy of the agreement or sublease of the leased premises, by certified mail, within 14 days after the effective date of such transaction. The Lessee shall delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

10. 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 Lessee 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 Lessee shall not use the Property 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; nursing home or assisted living facilities; and any type of educational purpose for children/young adults in grades kindergarten through 12.
 - 2) **Excavation and Development Restriction.** The Lessee 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) at the Property without prior written approval of the Army.
 - 3) **Excavation and Development Restriction:** The lease holder is hereby informed and acknowledges the presence of 8 groundwater monitoring wells on the Property. The locations of said monitoring wells are shown on Figure 2. The Lessee, for itself, its successors and assigns covenants and agrees not to remove, damage, alter or access, or permit others to remove, damage, alter or access, the said monitoring wells located on the Property without prior written approval from the Lessor and the NJDEP. Upon the Lessor's determination that a well is no longer necessary, the Lessor shall close such well at the Department of the Army's sole cost and expense in accordance with applicable laws.
 - 4) **Groundwater Use Restriction.** The lease holder shall not access or use groundwater underlying the Property for any purpose without the prior written approval of the United States Department of the Army and the New Jersey Department of Environmental Protection. For the purpose of this restriction, "groundwater" shall have the same meaning as in section 101(12) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

5) **Access Precautions.** The lease holder is hereby warned that the Property includes environmental sites where not all remedial action has been taken to protect human health and the environment. The lease holder will take all necessary personal safety and health precautions prior to entering the Property. In addition, the lease holder shall not disturb or otherwise interfere with remedial actions being conducted on the property.

B. **Modifying Restrictions.** Nothing contained herein shall preclude the Lessee from undertaking, in accordance with applicable laws and regulations and without any cost to the Army, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Lessee shall consult with and obtain the approval of the Army, and, as appropriate, the State or Federal regulators, or the local authorities in accordance with these Environmental Protection Provisions. Upon the Lessee's obtaining the approval of the Army and, as appropriate, State or Federal regulators, or local authorities, the Army agrees to revise the lease.

C. **Submissions.** The Lessee shall submit any requests for modifications to the above restrictions to the Army, postage prepaid, addressed as follows:

a. Lessor:

USACE NY District, CENAN-RE
Chief, Real Estate Division
26 Federal Plaza, Room 16-506
New York, NY 10278

11. HAZARDOUS WASTE MANAGEMENT

The Lessee will not store or dispose of hazardous materials on the leased premises unless authorized under 10 U.S.C. §2692. The Lessee shall strictly comply with hazardous waste management requirements under RCRA and New Jersey hazardous waste management rules, including proper hazardous waste characterization, labeling, storage, disposal, and documentation requirements. Except as specifically authorized by the Army in writing, the Lessee must provide, at its own expense, such hazardous waste management facilities, as needed to maintain compliance with all laws and regulations. Army hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements in this condition shall be deemed a material breach of this lease.

12. EXISTING HAZARDOUS WASTE

The Lessee will not use Fort Monmouth hazardous waste accumulation points. Neither will the lessee permit its hazardous wastes to be commingled with Fort Monmouth's hazardous waste.

13. LESSEE RESPONSE PLAN

The Lessee, either directly or through their Sub-lessee, that establishes operations within the facilities being made available for lease shall prepare and maintain thereafter, an Army-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such plan shall be independent of Fort Monmouth's Spill Contingency Plan and, except for initial fire response and/or spill containment, shall not rely on use of Fort Monmouth installation personnel or equipment. Should the Army provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the Lessee, or because the Lessee was not, in the opinion of the said officer, conducting timely cleanup actions, the Lessee agrees to reimburse the Army for its response costs.

14. ALTERATIONS, ADDITIONS AND IMPROVEMENTS TO THE LEASED PREMISES

The Lessee shall not construct, make or permit any alterations, additions, or improvements or otherwise modify the leased premises in any way which may adversely affect the Army's investigations and restoration, or human health or the environment without prior written consent of the Army. Such consent may include a requirement to provide the Army with a performance and payment bond to it in all respects and other requirements deemed necessary to protect the interests of the Army. Except as such written approval shall expressly provide otherwise, all such approved alterations/additions/modifications shall become government property when annexed to leased premises.

17. PESTICIDE NOTIFICATION AND COVENANT

The Lessee is hereby notified and acknowledges that registered pesticides have been applied to the property leased herein and may continue to be present thereon. The Lessor and Lessee know of no use of any registered pesticide in a manner (1) inconsistent with its labeling or with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)(7 U.S.C. § 136, et seq.) and other applicable laws and regulations, or (2) not in accordance with its intended purpose.

The Lessee covenants and agrees that if the Lessee takes any action with regard to the Property, including demolition of structures or any disturbance or removal of soil that may expose, or cause a release of, a threatened release of, or an exposure to, any such pesticide, Lessee assumes all responsibility and liability therefor.

ENCLOSURE 7
RESPONSE TO COMMENTS