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FINDING OF SUITABILITY TO LEASE
(FOSL)

Fort Monmouth, New Jersey

Fort Monmouth, Charles Wood Area Pool and Teen Center Buildings 2566 and 2569

July 17, 2012

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1. PURPOSE

The purpose of this Finding of Suitability to Lease (FOSL) is to document the environmental suitability of Fort Monmouth (FTMM), Charles Wood Area (CWA) Pool and Teen Center Buildings 2566 and 2569 for lease consistent with Department of Defense (DoD) policy. In addition, the FOSL includes the Environmental Protection Provisions (EPPs) necessary to protect human health and the environment during a lease.

Buildings 2566 and 2569 are intended to be leased for recreational use to the Fort Monmouth Economic Revitalization Authority (FMERA) who will in turn lease the facilities to Monmouth County for use as a pool and teen center. This use is consistent with the intended reuse of the property as set forth in the FMERA Reuse Plan. A site map of the property is attached (Enclosure 1).

2. BACKGROUND AND PROPERTY DESCRIPTION

This FOSL covers FTMM, CWA Building 2566 and 2569 and surrounding parking lot areas and open space on 6.5 acres (see Figure 1, Enclosure 1). 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 Material Command (AMC) and is the host activity. Fort Monmouth served as the center for the development of the Army's Command and Control Communications, Computers, Intelligence, Sensors and Reconnaissance (C4ISR) systems, operated as a partnership between the AMC and the Assistant Secretary of the Army for Acquisition, Logistics and Technology on the Main Post (MP). C4ISR was the primary tenant of the Fort. Much of the Army's research and development of high-tech systems was done at Fort Monmouth. The support provided by the Garrison was used by tenant activities in the performance of research, development, procurement, and production of prototype communications and electronics equipment for use by the U.S. Armed Forces. FTMM is divided into three areas MP, the CWA and the Evans Area (EA). The CWA was used primarily for research and development (R&D), testing, housing, and recreation. The CWA research, development and testing facilities occupied the southwest corner of the sub-post. The northwest corner formerly held residential units but is currently undeveloped. Residential units currently occupy the southeastern boundary and the golf course occupies the northeast corner.

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. The CWA area was

acquired by the Army in 1941. Fort Monmouth falls within the Boroughs of Eatontown, Oceanport, and Tinton Falls. Buildings 2566 and 2569 fall within Tinton Falls.

The area where Building 2566 and 2569 are located was formerly the location of the Charles Wood Area Sewage Treatment Plant (STP). The STP was built in 1942 to handle 800,000 gallons of sewage per day. The STP consisted of a grit chamber screen, comminutor, primary and secondary settling tanks, biofilters, and a baffled contact chlorination tank. Sludge was treated in two anaerobic digesters and discharged to under drained sand beds for final drying. This STP was closed on 29 October 1975 when the Charles Wood sewer system was connected to the Northeast Monmouth County Regional Sewage Authority (NMCRSA) system now the Two Rivers Water Reclamation Authority. In 1981, all sludges and supernatant liquids were removed from the STP and the facility was cleaned and disinfected. The removal contractor was Modern Transportation Co. of Kearny, New Jersey. Mercury used in the distributor seal on the biofilter was removed and disposed of by the Directorate of Logistics. The physical facility was demolished in 1983.

Building 2566 was built in 1993 as a youth center and severed as such up until base closure. Building 2569 was built in 1942 as a shower and bathroom for the pool and has been used as such since its construction.

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the property was made based upon the:

- U.S. Army BRAC 2005 Environmental Condition of Property Report Fort Monmouth, Monmouth County, New Jersey, Final, 29 January 2007.
- Fort Monmouth Reuse and Redevelopment Plan, Final Plan, 22 August 2008.
- U.S. Army BRAC 2005 Site Investigation Report Fort Monmouth, Final, 21 July 2008.
- Draft Baseline Ecological Evaluation (BEE) Report, May 2011.
- U.S. Army, Environmental Condition of Property Recertification Report, Fort Monmouth, Monmouth County, New Jersey, 17 July 2012.

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 2).

4. ENVIRONMENTAL CONDITION OF PROPERTY

The DoD Environmental Condition of Property (ECP) category for the property is listed as ECP Category 1 for the majority of the property which lies within ECP Parcel 35. This determination is based on the Phase 1 ECP. A small part of the property that is within ECP Parcel 28 is listed as Category 7, based on the Phase 1 ECP. This Category 7 designation was based on all of the environmental conditions associated with ECP Parcel 28. That is, the Category 7

designation was based on potential environmental issues in the areas around Building 2525 and Building 2700, and not necessarily conditions near the eastern edge of ECP Parcel 28. It is noted that the Phase 1 ECP report was supplemented by a Phase 2 ECP report entitled "U.S. Army BRAC 2005 Site Investigation Report Fort Monmouth, Final, 21 July 2008." The Phase 2 report investigated the potential environmental issues associated with ECP Parcel 28 including those that led to the ECP Category 7 designation for ECP Parcel 28. However since those areas are not near the part of ECP Parcel 28 that is part of the property to be leased they are not discussed herein.

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 3).

4.1 Environmental Remediation Sites

There are no environmental investigation or remediation sites and no evidence of groundwater contamination on the property.

4.2 Storage, Release, or Disposal of Hazardous Substances

Hazardous substances used at the STP: chlorine, mercury and other water treatment chemicals were stored on the site from 1942 until the 1970's. There is no evidence that hazardous substances were released, or disposed of on the property in excess of the 40 CFR Part 373 reportable quantities.

4.3 Petroleum and Petroleum Products

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

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 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 is no evidence that PCB-containing equipment is located or was previously located on the property.

4.5 Asbestos

Four phases of asbestos surveys were completed for FTMM. The majority of surveys took place from 1989 to 1992 and from 1997 to 2002. Building 2566 was not surveyed and does not contain asbestos based on the year it was constructed (1993).

Building 2569 was constructed in 1942 but was not included in the original surveys. Though building 2569 has been renovated several times over the years and a recent walk through of the building indicates there is no asbestos present, it is still unclear whether building 2569 contains any asbestos containing material (ACM). The lease will contain an asbestos warning and covenant.

4.6 Lead-Based Paint (LBP)

Most facilities and buildings at FTMM were constructed before the DoD ban on the use of lead based paint (LBP) in 1978 and are likely to contain one or more coats of such paint. In addition, some facilities constructed immediately after the ban may also contain LBP, because inventories of such paints that were in the supply network were likely to have been used up at these facilities.

The first LBP Risk Assessment was conducted in 1996. Only residential buildings were assessed. Buildings 2566 or 2569 are not residential structures.

Building 2566 was constructed in 1993 and, therefore, it is presumed that this building does not contain lead based paint.

No LBP survey work has been conducted at the non-residential buildings. Based on the age of the facility, the following building is presumed to contain LBP: Building 2569 (constructed in 1942). See 2007 ECP Report for additional information. Building 2569 was not used for residential purposes and the leasee does not intend to use the property for residential purposes in the future. The lease will include a lead-based paint warning and covenant (Enclosure 5).

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. A Historic Records Review (HRR) conducted in 2006 did not find any record of range or other activities that would result in MEC or explosives contamination at or around Buildings 2566 and 2569.

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

There are no other hazardous conditions on the property to be leased that present an unacceptable risk to human health and the environment.

As discussed in section 2 above, the site was formerly used as the STP for the Charles Wood Area. The area was investigated under the Fort Monmouth Installation Restoration Program as Site FTMM-27(CW-5). No compounds of concern were detected above NJDEP criteria, and a No Further Action determination was approved by the NJDEP in 1994.

A septic tank was identified on the property; refer to site map (Enclosure 1). The septic tank was identified on a Master Utilities Plan map of the Area from 1948-1949 that showed the former STP facility. The septic tank was labeled on the map as being “out of service”. The status of the septic tank is unknown. The septic tank location has not been investigated.

5. ADJACENT PROPERTY CONDITIONS

The following other environmental conditions exist on adjacent property:

- ECP Parcel 29. A former #2 fuel oil UST and petroleum-contaminated soil were removed in 1995. A closure report was submitted to the NJDEP requesting a No Further Action determination in 1998, and a No Further Action approval letter was received from the NJDEP on 7/10/98.
- ECP Parcel 30. A former gasoline UST and potentially contaminated soil were removed in 1993. All confirmatory soil analytical results were below NJDEP criteria. Methyl-tertiary-butyl ether (MTBE) and lead were previously detected in groundwater above NJDEP criteria, but have been below the standards since November 1998. A closure report requesting No Further Action was submitted to the NJDEP on 01/02/02.

- ECP Parcel 31. A former #2 fuel oil UST and 15 cubic yards of petroleum-contaminated soil were removed in 1997. A closure report was submitted to the NJDEP requesting a No Further Action determination in 1998, and a No Further Action approval letter was received from the NJDEP on 8/29/00.
- ECP Parcel 32. The former indoor small arms firing range located west of Building 2566 was investigated under the Fort Monmouth Installation Restoration Program as Site FTMM-26 (CW-4). Lead identified in soil above NJDEP Direct Contact Soil Cleanup Criteria, spent rounds, and casings, were removed in 1997. An RI report requesting an NFA determination from the NJDEP was submitted in October 2005 and an NFA letter was received from the NJDEP 4/26/2007.
- ECP Parcel 34. The former gasoline service station at Building 2567 within ECP Parcel 34 (see Figure 1) operated by AAFES is southeast of Buildings 2566 and 2569. Contaminated soil was removed from the gas station site in 1993. Groundwater contamination is being remediated (IRP site FTMM-58). The current proposed remedial action for the groundwater at Building 2567 is no further action as all groundwater currently is below groundwater criteria. The direction of groundwater flow from this parcel is away from the property to be leased.

The presence of these former conditions on adjacent property does not present an unacceptable risk to human health and the environment because they have all been remediated to acceptable levels.

6. ENVIRONMENTAL REMEDIATION AGREEMENTS

The following environmental agreement is applicable to Fort Monmouth generally: Voluntary Cleanup Agreement among New Jersey Department of Environmental Protection, U.S. Department of the Army, U.S. Department of the Navy, U.S. Department of the Air Force, and U.S. Defense Logistics Agency, dated August 30, 2000. However, the Voluntary Cleanup Agreement does not require any remedial action on the property. The lease will include a provision reserving the Army's right to conduct remediation activities under the Voluntary Cleanup Agreement if necessary in the future (Enclosure 4).

7. REGULATORY/PUBLIC COORDINATION

The NJDEP and the public were notified of the initiation of this FOSL. 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 6.

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 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 condition 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 Building 2566 and 2569 and surrounding Property is suitable for lease for the intended use as recreational facilities, the use contemplated for the lease is consistent with the protection of human health and the environment, and there is adequate assurance that the United States will take any additional remedial action found to be necessary that has not been taken on the date of the lease. In addition, all Department of Defense 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 that shall be included in the lease for the property. The lease will also include the Access Provisions and Other Deed Provisions.

Mr. James Briggs
Acting Chief, Consolidated Branch
BRAC Division

Date

Enclosures

Encl 1 -- Site Map of Property

Encl 2 -- Environmental Documentation

Encl 3 -- Table 1 -- Description of Property

Encl 4 -- Access and Other Deed Provisions

Encl 5 -- Environmental Protection Provisions

Encl 6 -- Regulatory/Public Comments and Responses

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ENCLOSURE 1

Site Map of Property

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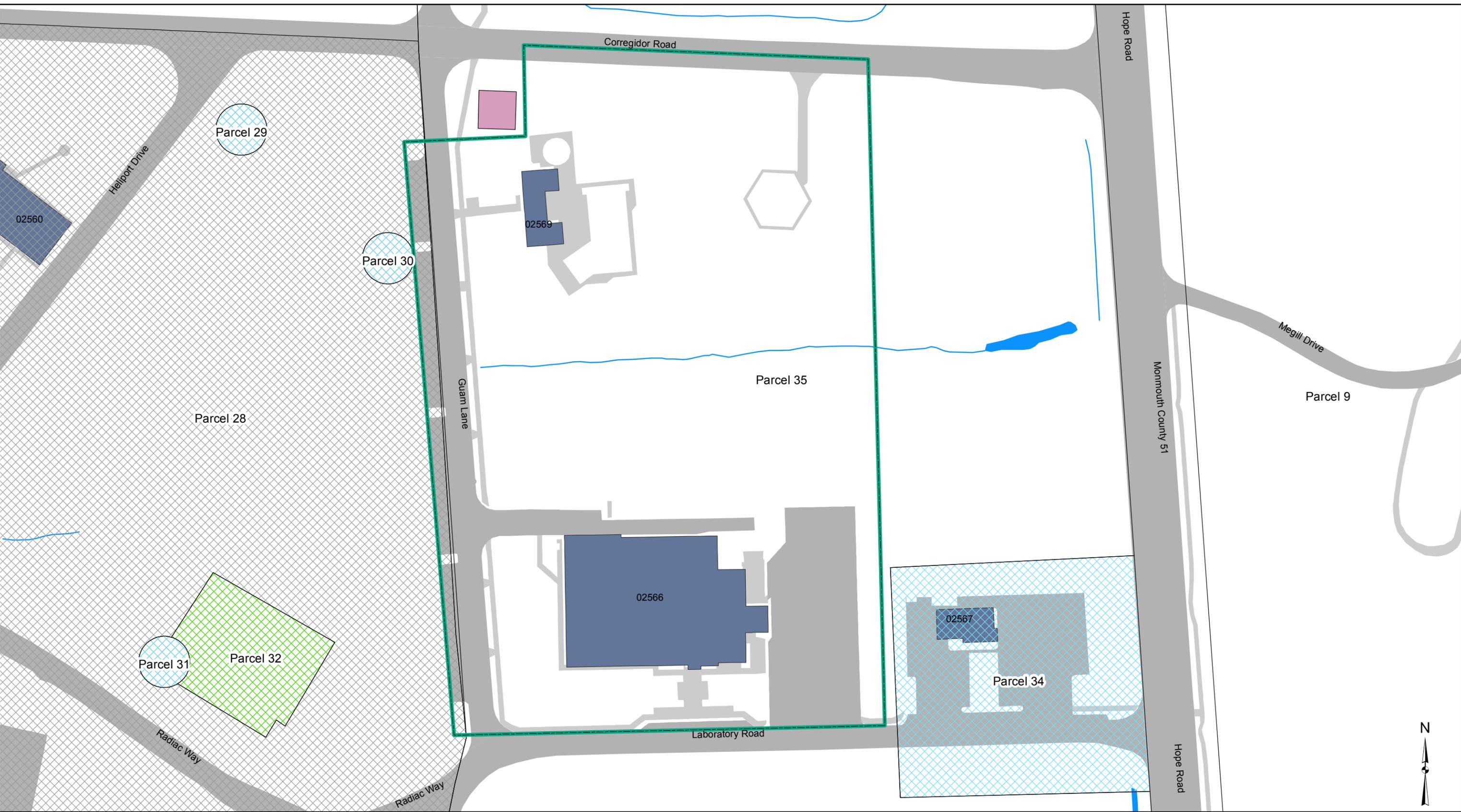
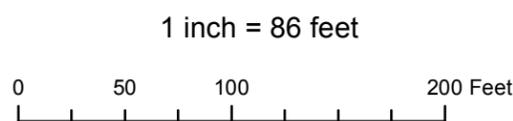


Figure 1
Fort Monmouth
Teen Center / Pool Parcel
Finding of Suitability to Lease

Publication Date: 28 JUN 2012
 Spheroid: WGS 1984
 Projection: UTM Zone 18
 Prepared by: Marc Thompson, CALIBRE GIS Team



Legend

- Teen Center / Pool Parcel
- Former Septic Tank Location
- Existing Buildings
- Roads and Parking Areas
- Sidewalk Areas
- Surface Water Features

ECP Parcel Categories

- 1
- 2
- 4
- 7



ENCLOSURE 2

Environmental Documentation

(Note: The following documents are the complete list of document that were used for the ECP report and not all of the documents may apply to this FOSL)

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2. Cabrera Services, Inc. 2006. Draft Historical Site Assessment. September.
3. CECOM Safety. 1995-2004. RCC, Minutes of Radiological Control Committee Meetings.
4. DeBellis & Semmens. 1995. Charles Wood Area, Fort Monmouth, NJ Delineation of Wetlands, Prepared for DPW, Fort Monmouth, NJ.
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6. EDAW, Inc. 2008. *Fort Monmouth Reuse and Redevelopment Plan, Final Plan*. 22 August.
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18. Fort Monmouth. 2001. Installation Pest Management Plan for Headquarters U.S. Army Garrison, Fort Monmouth, NJ 07793. 2001 to 2006.

19. Fort Monmouth. 2005. Spill Prevention Control and Countermeasures Plan (SPCCP) and Installation Spill Contingency Plan (ISCP). Revision Date February 2005.
20. Fort Monmouth. 2006a. Stormwater Pollution Prevention Plan (SPPP) Public Complex Permit (R-11), Main Post and Charles Wood Areas. March.
21. Fort Monmouth. 2006b. FY06 Base Realignment and Closure Installation Action Plan, working files obtained from U.S. Army Environmental Command. April 28, 2006.
22. Fort Monmouth. 2006c. Spill Prevention Control and Countermeasures Plan (SPCCP) and Installation Spill Contingency Plan (ISCP). Revision Date September.
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26. Fort Monmouth DPW. 2003. Files provided by DPW: 03-03 Asbestos Database.mdb. March.
27. Fort Monmouth DPW. 2005. Cover Letter for Lead-Based Paint Risk Assessment Summaries. June 30.
28. Fort Monmouth DPW. 2006a. Files provided by DPW: USTs and ASTs from Joe Fallon 7-19-06.pdf.
29. Fort Monmouth DPW. 2006b. Master Planning, Facilities Reduction Program Database. December.
30. Guernsey. 1998. Procurement Sensitive Privatization Study, Potable Water Utility System, Wastewater Utility System, April.
31. Harland Bartholomew & Associates, Inc. 1984. Analysis of Existing Facilities and Environmental Assessment Report, Fort Monmouth, NJ. March.
32. Harland Bartholomew & Associates, Inc. 1987a. Fort Monmouth Mobilization Master Plan of Installation Facilities. May.
33. Harland Bartholomew & Associates, Inc. 1987b. Analytical/Environmental Assessment Report on Plans for Future Development, Fort Monmouth, NJ. May.
34. John Milner Associates, Inc. 2003. Integrated Cultural Resources Management Plan, Fort Monmouth, NJ.
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44. Shaw. 2008. *U.S. Army BRAC 2005 Site Investigation Report Fort Monmouth, Final*. 21 July.
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82. USAEHA. 1981. Hazardous Waste Management Survey No. 37-26-0137-81, Fort Monmouth, NJ. January 26-30.
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ENCLOSURE 3

TABLE 1 – DESCRIPTION OF PROPERTY

Building Number and Property Description	ECP Parcel Designation	Condition Category	Remedial Actions
Building 2566 and 2569	35(1)PS	1	None
Parking areas northwest of Buildings 2566 and 2569	28(7)HS/HR(P)/PS/PR(P)	7	None on the parts of Parcel 28 that are part of the proposed lease area.

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 a 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 taken place.

Category 6: Areas where a release, disposal, and/or migration of hazardous substances has occurred, but required actions have not yet been implemented.

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

ENCLOSURE 4

ACCESS PROVISIONS AND OTHER DEED PROVISIONS

The following Access and Other Deed 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 5

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 for recreational uses.

2. SUBSEQUENT TRANSFERS

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 consent of the Army. Such consent shall not be unreasonably withheld or delayed. Every lease or sublease shall contain the environmental protection provisions contained herein.

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 Environmental Protection Agency; 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. INTERERENCE 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. The Lessee shall indemnify the Army for any costs incurred as a result of Lessee's breach of this provision.

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.

7. ENVIRONMENTAL REMEDIATION AGREEMENT

Fort Monmouth is subject to the following environmental remediation agreement: Voluntary Cleanup Agreement among New Jersey Department of Environmental Protection, U.S. Department of the Army, U.S. Department of the Navy, U.S. Department of the Air Force, and U.S. Defense Logistics Agency, dated August 30, 2000. .

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 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 Fort Monmouth 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. 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 EPA Region 2, and 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) **Groundwater Restriction.** The Lessee shall not access or use groundwater underlying the Property for potable uses without the prior written approval of United States Department of the Army and the NJDEP. 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).
 - 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.
- 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 this 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, NJDEP and EPA by first class mail, postage prepaid, addressed as follows:

a. Lessor:

Fort Monmouth

Fort Monmouth, NJ

b. NJDEP: State of New Jersey
Department of Environmental Protection
Bureau of Case Management 401 East State Street
P.O. Box 420
Mail Code 401-05F
Trenton, NJ 08625-0028

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 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 Fort Monmouth's investigations, 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.

15. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

- A. The Lessee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material (ACM) may be present on the Property. The Property may also 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 U.S. Environmental Protection Agency (EPA) 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 Lessee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Lessee agrees to be responsible for any future remediation or abatement of asbestos found to be necessary on the Property during the lease.
- C. The Lessee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM content and condition, and any hazardous or environmental conditions relating thereto. 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 ACM hazards or concerns.

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

- A. The Lessee is hereby informed and does acknowledge that the following buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint: Building 2569. 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 Leased Premises are not being leased for residential purposes. The Lessee 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 lease is intended for residential habitation, the Lessee specifically agrees to obtain written consent from

the Army and, upon receiving written consent, 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 Lessee 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 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 lead-based paint hazards or concerns.
- D. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of the lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Condition of Property Report, which has been provided to the Lessee. Additionally, the Lessee has been provided with a copy of the federally approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all information described in this subparagraph.

17. NOTICE OF THE PRESENCE OF PESTICIDES AND COVENANT

A. The Lessee is hereby notified and acknowledges that registered pesticides have been applied to the Property conveyed herein and may continue to be present thereon. The Lessee further acknowledges that where a pesticide was applied by the Lessor or at the Lessor's direction, the pesticide was applied in accordance with its intended purpose and consistently with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)(7 U.S.C. § 136, et seq.) and other applicable laws and regulations.

B. 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.