

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

**Fort Hunter Liggett**

**Tidball Store Site**

*Prepared for*

**Commander, Fort Hunter Liggett, California**

*Prepared by*

**U. S. Army Reserve Command, Installation Management**

**Directorate**

**December 2014**

**FINDING OF SUITABILITY TO TRANSFER  
(FOST)  
Fort Hunter Liggett  
Tidball Store Site**

**December 1, 2014**

**1. PURPOSE**

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of certain parcels or property at Tidball Parcel, Fort Hunter Liggett, Monterey County, California, for transfer to the County of Monterey, California 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 Covenant and Access Provisions and other Deed Provisions (Enclosure 4) and the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment after such transfer (Enclosure 5).

**2. PROPERTY DESCRIPTION**

The property consists of 2.5 acres, which includes one building (Tidball Store) which is owned by the County of Monterey. The Tidball Store structure is not part of the subject property for this FOST. The property previously contained a combination store and bar, two private residences, teamster house, and barn as discussed in the Environmental Condition of Property Report (referenced in Enclosure 2).

The property is intended to be transferred to the County of Monterey wherein it will be maintained as a National Register of Historic Places site to be maintained by the County of Monterey in that condition and in a manner consistent with the intended reuse of the property as set forth in the enclosed Memorandum of Agreement (MOA) between the Department of the Army, the County of Monterey, California, and the California State Historic Preservation Office (SHPO). A site map of the property is provided (Enclosure 1).

**3. ENVIRONMENTAL DOCUMENTATION**

A determination of the environmental condition of the property was made based upon the Environmental Condition of Property Report dated November 2013, Tidball Store Geophysical Site Survey Report dated September 13, 2013, Section 106 NHPA SHPO Consultation and MOA, an Environmental Analytical Report dated May 16, 2013, and Environmental Assessment (EA) dated March 2014 (Enclosure 2; documents on file at USAG Fort Hunter Liggett). The information provided includes a complete search of agency files during the development of these environmental surveys.

**4. ENVIRONMENTAL CONDITION OF PROPERTY**

The DOD Environmental Condition of Property (ECP) category for the subject site is ECP Category 1: there is no reason to expect contamination will be encountered (Enclosure 1).

#### **4.1. ENVIRONMENTAL REMEDIATION SITES**

There are no environmental investigation/remediation sites within or adjacent to the subject site and there is no evidence of groundwater contamination on the property.

#### **4.2. STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES**

There is no evidence that hazardous substances were stored, released, or disposed of on the subject site.

#### **4.3. PETROLEUM, PETROLEUM PRODUCTS, UNDERGROUND AND ABOVE-GROUND STORAGE TANKS (UST/AST):**

4.3.1 There were no USTs and one AST on the property has been removed. There is no evidence of petroleum releases from these sites.

4.3.2 There is no evidence that petroleum products were stored in underground or above-ground storage tanks on the property.

4.3.3 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**

Other than the Tidball Store building, which is owned by the County of Monterey, there is no evidence of other buildings or structures located on the property.

#### **4.6. LEAD-BASED PAINT (LBP)**

The property contains one building that may have been coated with lead based paint (the Tidball Store that is owned by the County of Monterey). Soil analysis for the presence of lead was conducted (Enclosure 3). Based upon that report, lead was found within the soil which has been determined to be below the industrial soil screening level. However, one sample did exceed the residential soil screen level. As the site will not be used for to contain either school, childhood development center, children's playground, of residential housing, there is no regulatory requirement for lead containing soil to be removed from the Tidball Store site. There are no LBP or lead contaminated soil remediation plans for site.

#### **4.7. INDOOR FIRING RANGES**

The site was not used as an indoor firing range.

#### **4.9. RADIOLOGICAL MATERIALS**

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

#### **4.10. RADON**

A radon survey was not conducted on the property. The EPA Radon Zone for Monterey County is Zone 2, so average indoor radon levels are expected to be greater than or equal to 2 picocuries per liter (pCi/L) and less than or equal to 4pCi/L (EDR 2013a). The EPA action level is 4pCi/L or greater.

#### **4.11. 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.

Although an active training range is near the subject property to the east, the land being transferred is not part of a historical or active training range or impact area (Fort Hunter Liggett 2013b). The training range is approximately ½ mile from the subject site with down range weapons firing occurring in the opposite geographical direction from the subject site's physical location. Nonetheless, the geophysical survey of the property included a search for evidence of MEC. Based upon that report, no MEC was found.

#### **4.12. OTHER PROPERTY CONDITIONS**

There are no other hazardous conditions on the property that present an unacceptable risk to human health and the environment, but see MEC discussion in Section 4.11 above.

### **5. ADJACENT PROPERTY CONDITIONS**

There are no potentially hazardous conditions on adjacent property. Although the Tidball Store site is located in close proximity to the Fort Hunter Liggett training area. There are no conditions adjacent to the property that would present an unacceptable risk to human health and the environment.

### **6. ENVIRONMENTAL REMEDIATION AGREEMENTS**

There are no environmental remediation orders or agreements applicable to the property being transferred.

### **7. REGULATORY/PUBLIC COORDINATION**

The U.S. EPA Region 9 and the State of California Department of Toxic Substances were notified of the Department of the Army's intent to transfer the subject site to the County of Monterey. In this case, the subject site has no known contaminants beneath the ground surface or on the Tidball Store site, the site has not been the subject of a CERCLA or State of California clean up action, and there is no record or documentation to show that the subject site was used to store hazardous materials, hazardous waste, or toxic substances, and petroleum, oils, or lubricants in quantities 55 gallons or more for a period of one year or more. However, agency coordination with the U. S. EPA and State of California Department of Toxic Substances was undertaken. The U. S. EPA Region 9 has determined that the Tidball Store site requires no further coordination or review by that agency. The Department of Toxic Substances Control has determined that the Tidball Store site requires no further coordination or review by that agency. In addition, the draft FOST document was published on the Fort Hunter Liggett public access internet web page.

## **8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE**

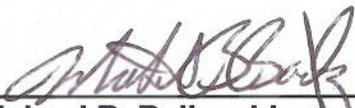
The environmental impacts associated with the proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis are documented in the Environmental Assessment (EA) for the Tidball Land Conveyance at Fort Hunter Liggett, California. The NEPA analysis identified the following encumbrance: the subject site is listed as an historic property in the National Register of Historic Places. In accordance with 36 CFR 800.5, the transfer of the site out of Army ownership is considered an adverse effect unless specific deed restrictions or covenants are established and recorded on the deed that will protect and preserve the historic characteristics and integrity of the site. Accordingly, a Memorandum of Agreement has been entered into between the Department of the Army, County of Monterey, and the California SHPO. The signed MOA will serve as mitigation to offset the transfer of the Tidball Store site to the County of Monterey, California.

## **9. FINDING OF SUITABILITY TO TRANSFER**

### **ECP Category 1, CERCLA 120(h)(4), Uncontaminated Property (State or EPA concurs):**

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) Covenant and Access Provisions and Other Deed Provisions (Enclosure 4). 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.

10. SIGNATURE



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Michael B. Bailey, Lieutenant Colonel, US Army  
Commanding  
US Army Garrison, Fort Hunter Liggett

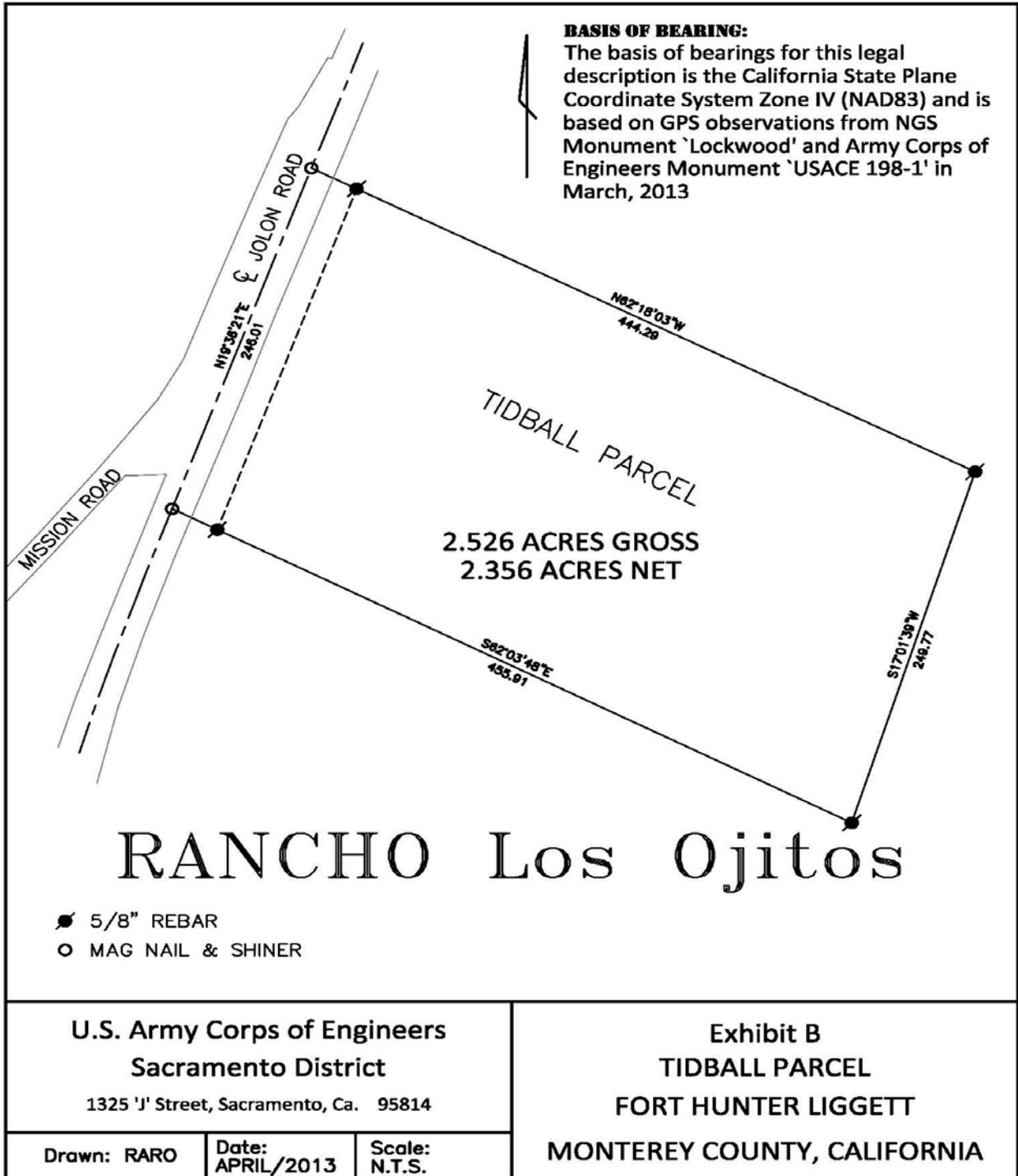
20141210

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Date

ENCLOSURE 1

SITE MAP



## ENCLOSURE 2

### ENVIRONMENTAL DOCUMENTATION

Ahtna Engineering. 2013. *Final Tidball Store Geophysical Site Survey Completion Report Fort Hunter Liggett, California*. Prepared for US Army Corps of Engineers, Los Angeles District. September 2013.

California State Historic Preservation Office. 2014. Section 106 Consultation Tidball Land Transfer from US Army at Fort Hunter Liggett to the County of Monterey, CA. USN\_2013\_1226\_001.

US Army. 2014. Memorandum of Agreement Between the Department of the Army and the County of Monterey, California and the California State Historic Preservation Office Regarding the Transfer of Title of 2.5 Acres of Land. Executed November 24, 2014.

USACE (United States Army Corps of Engineers). 2012. *Environmental Assessment for the Tidball Land Conveyance at Fort Hunter Liggett, California*. With technical assistance from Tetra Tech, Inc., Oakland, CA. March 2014.

USACE (United States Army Corps of Engineers). 2013. *Environmental Condition of Property Report for the Tidball Store Land Conveyance at Fort Hunter Liggett, California*. With technical assistance from Tetra Tech, Inc., Oakland, CA. November 2013.

USFWS (U.S. Fish and Wildlife Service). 2014. Tidball Land Conveyance at Fort Hunter Liggett, Monterey County, California (08EVEN00-2014-TA-0132). U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, Ventura, California. February 21, 2014.

# ENCLOSURE 3

## ENVIRONMENTAL ANALYTICAL REPORT



May 16, 2013

**CSTC Fort Hunter Liggett**  
Environmental Division  
Building 243 Infantry Road  
Fort Hunter Liggett, CA 93928

Lab ID : CC 1381283  
Customer : 8-9

### Laboratory Report

**Introduction:** This report package contains total of 9 pages divided into 3 sections:

- Case Narrative (2 pages) : An overview of the work performed at FGL.
- Sample Results (6 pages) : Results for each sample submitted.
- Quality Control (1 page) : Supporting Quality Control (QC) results.

### Case Narrative

This Case Narrative pertains to the following samples:

Sample Description	Date Sampled	Date Received	FGL Lab ID #	Matrix
Tidball Store SL1	04/22/2013	04/22/2013	CC 1381283-001	S
Tidball Store SL2	04/22/2013	04/22/2013	CC 1381283-002	S
Tidball Store SL3	04/22/2013	04/22/2013	CC 1381283-003	S
Tidball Store SL4	04/22/2013	04/22/2013	CC 1381283-004	S
Tidball Store SL5	04/22/2013	04/22/2013	CC 1381283-005	S
Tidball Store SL6	04/22/2013	04/22/2013	CC 1381283-006	S

**Sampling and Receipt Information:** All samples were received, prepared and analyzed within the method specified holding times. All samples arrived on ice. All samples were checked for pH if acid or base preservation is required (except for VOAs). For details of sample receipt information, please see the attached Chain of Custody and Condition Upon Receipt Form.

**Quality Control:** All samples were prepared and analyzed according to the following tables:

### Inorganic - Metals QC

200.7	05/16/2013:207085 All analysis quality controls are within established criteria.
3050	05/16/2013:205443 All preparation quality controls are within established criteria, except: The following note applies to Lead: 430 Post Digestion Spike (PDS) not within Acceptance Range (AR) because of matrix interferences affecting this analyte.



May 16, 2013  
**CSTC Fort Hunter Liggett**

Lab ID : CC 1381283  
Customer : 8-9

**Certification::** I certify that this data package is in compliance with NELAC standards, both technically and for completeness, except for any conditions listed above. Release of the data contained in this data package is authorized by the Laboratory Director or his designee, as verified by the following electronic signature.

KD:KDM

Approved By **Kelly A. Dunnahoo, B.S.**

 Digitally signed by Kelly A. Dunnahoo, B.S.  
Title: Laboratory Director  
Date: 2013-05-16

May 16, 2013

Lab ID : CC 1381283-001  
 Customer ID : 8-9

**CSTC Fort Hunter Liggett**  
 Environmental Division  
 Building 243 Infantry Road  
 Fort Hunter Liggett, CA 93928

Sampled On : April 22, 2013-10:00  
 Sampled By : Alma Zavala  
 Received On : April 22, 2013-10:34  
 Matrix : Soil

Description : Tidball Store SL1  
 Project : Tidball Store Soil Sampling

**Sample Result - Inorganic**

Constituent	Result	PQL	Units	Note	Sample Preparation		Sample Analysis	
					Method	Date/ID	Method	Date/ID
<b>Metals, Total<sup>GL</sup></b>								
Lead	134	0.5	mg/kg		3050	05/16/13:205443	200.7	05/16/13:207085

ND=Non-Detected, PQL=Practical Quantitation Limit, Containers: (G) Glass Jar Preservatives: N/A †Surrogate, \* PQL adjusted for dilution.



May 16, 2013

Lab ID : CC 1381283-002  
 Customer ID : 8-9

**CSTC Fort Hunter Liggett**  
 Environmental Division  
 Building 243 Infantry Road  
 Fort Hunter Liggett, CA 93928

Sampled On : April 22, 2013-10:05  
 Sampled By : Alma Zavala  
 Received On : April 22, 2013-10:34  
 Matrix : Soil

Description : Tidball Store SL2  
 Project : Tidball Store Soil Sampling

**Sample Result - Inorganic**

Constituent	Result	PQL	Units	Note	Sample Preparation		Sample Analysis	
					Method	Date/ID	Method	Date/ID
<b>Metals, Total<sup>GL</sup></b>								
Lead	291	0.5	mg/kg		3050	05/16/13:205443	200.7	05/16/13:207085

ND=Non-Detected, PQL=Practical Quantitation Limit, Containers: (G) Glass Jar Preservatives: N/A †Surrogate, \* PQL adjusted for dilution.





May 16, 2013

Lab ID : CC 1381283-003  
Customer ID : 8-9

**CSTC Fort Hunter Liggett**  
Environmental Division  
Building 243 Infantry Road  
Fort Hunter Liggett, CA 93928

Sampled On : April 22, 2013-10:06  
Sampled By : Alma Zavala  
Received On : April 22, 2013-10:34  
Matrix : Soil

Description : Tidball Store SL3  
Project : Tidball Store Soil Sampling

**Sample Result - Inorganic**

Constituent	Result	PQL	Units	Note	Sample Preparation		Sample Analysis	
					Method	Date/ID	Method	Date/ID
<b>Metals, Total<sup>GL</sup></b>								
Lead	662	0.5	mg/kg		3050	05/16/13:205443	200.7	05/16/13:207085

ND=Non-Detected, PQL=Practical Quantitation Limit, Containers: (G) Glass Jar Preservatives: N/A †Surrogate, \* PQL adjusted for dilution.



May 16, 2013

Lab ID : CC 1381283-004  
 Customer ID : 8-9

**CSTC Fort Hunter Liggett**  
 Environmental Division  
 Building 243 Infantry Road  
 Fort Hunter Liggett, CA 93928

Sampled On : April 22, 2013-10:07  
 Sampled By : Alma Zavala  
 Received On : April 22, 2013-10:34  
 Matrix : Soil

Description : Tidball Store SL4  
 Project : Tidball Store Soil Sampling

**Sample Result - Inorganic**

Constituent	Result	PQL	Units	Note	Sample Preparation		Sample Analysis	
					Method	Date/ID	Method	Date/ID
<b>Metals, Total</b> <sup>GL</sup>								
Lead	121	0.5	mg/kg		3050	05/16/13:205443	200.7	05/16/13:207085

ND=Non-Detected, PQL=Practical Quantitation Limit, Containers: (G) Glass Jar Preservatives: N/A †Surrogate, \* PQL adjusted for dilution.



May 16, 2013

Lab ID : CC 1381283-005

Customer ID : 8-9

**CSTC Fort Hunter Liggett**

Environmental Division  
 Building 243 Infantry Road  
 Fort Hunter Liggett, CA 93928

Sampled On : April 22, 2013-10:07

Sampled By : Alma Zavala

Received On : April 22, 2013-10:34

Matrix : Soil

Description : Tidball Store SL5

Project : Tidball Store Soil Sampling

**Sample Result - Inorganic**

Constituent	Result	PQL	Units	Note	Sample Preparation		Sample Analysis	
					Method	Date/ID	Method	Date/ID
<b>Metals, Total<sup>GL</sup></b>								
Lead	64.1	0.5	mg/kg		3050	05/16/13:205443	200.7	05/16/13:207085

ND=Non-Detected, PQL=Practical Quantitation Limit, Containers: (G) Glass Jar Preservatives: N/A †Surrogate, \* PQL adjusted for dilution.



May 16, 2013

Lab ID : CC 1381283-006  
 Customer ID : 8-9

**CSTC Fort Hunter Liggett**  
 Environmental Division  
 Building 243 Infantry Road  
 Fort Hunter Liggett, CA 93928

Sampled On : April 22, 2013-10:08  
 Sampled By : Alma Zavala  
 Received On : April 22, 2013-10:34  
 Matrix : Soil

Description : Tidball Store SL6  
 Project : Tidball Store Soil Sampling

**Sample Result - Inorganic**

Constituent	Result	PQL	Units	Note	Sample Preparation		Sample Analysis	
					Method	Date/ID	Method	Date/ID
<b>Metals, Total<sup>GL</sup></b>								
Lead	80.8	0.5	mg/kg		3050	05/16/13:205443	200.7	05/16/13:207085

ND=Non-Detected, PQL=Practical Quantitation Limit, Containers: (G) Glass Jar Preservatives: N/A †Surrogate, \* PQL adjusted for dilution.



May 16, 2013  
**CSTC Fort Hunter Liggett**

Lab ID : CC 1381283  
 Customer : 8-9

**Quality Control - Inorganic**

Constituent	Method	Date/ID	Type	Units	Conc.	QC Data	DQO	Note
Metals Lead	200.7	05/16/13:207085AC	CCV	ppm	1.000	100 %	90-110	
			CCB	ppm		0.0032	0.01	
			CCV	ppm	1.000	103 %	90-110	
			CCB	ppm		0.0014	0.01	
			CCV	ppm	1.000	103 %	90-110	
			CCB	ppm		0.0025	0.01	
	3050	05/16/13:205443AMB  (CC 1381380-001)	Blank	mg/kg		ND	<0.5	
			LCS	mg/kg	40.00	103 %	85-115	
			MS	mg/kg	40.00	97.0 %	75-125	
			MSD	mg/kg	40.00	91.3 %	75-125	
			MSRPD	mg/kg	39.94	5.4%	≤20	
			PDS	mg/kg	40.00	-2.5 %	75-125	430
<b>Definition</b>								
PDS : PDS failed, matrix - Post Digestion Spike (PDS) not within Acceptance Range (AR) because of matrix interferences affecting this analyte.								
CCV : Continuing Calibration Verification - Analyzed to verify the instrument calibration is within criteria.								
CCB : Continuing Calibration Blank - Analyzed to verify the instrument baseline is within criteria.								
Blank : Method Blank - Prepared to verify that the preparation process is not contributing contamination to the samples.								
LCS : Laboratory Control Standard/Sample - Prepared to verify that the preparation process is not affecting analyte recovery.								
MS : Matrix Spikes - A random sample is spiked with a known amount of analyte. The recoveries are an indication of how that sample matrix affects analyte recovery.								
MSD : Matrix Spike Duplicate of MS/MSD pair - A random sample duplicate is spiked with a known amount of analyte. The recoveries are an indication of how that sample matrix affects analyte recovery.								
MSRPD : MS/MSD Relative Percent Difference (RPD) - The MS relative percent difference is an indication of precision for the preparation and analysis.								
ND : Non-detect - Result was below the DQO listed for the analyte.								
DQO : Data Quality Objective - This is the criteria against which the quality control data is compared.								
<b>Explanation</b>								
430 : Post Digestion Spike (PDS) not within Acceptance Range (AR) because of matrix interferences affecting this analyte.								



## ENCLOSURE 4

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

#### **I. Property Covered by Covenant and Access Rights Made Pursuant to Section 120(h)(4)(D) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)):**

For the property the Grantor provides the following covenants and retains the following access rights:

#### **A. 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)(4)(D)(i)):**

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)(4)(D)(i)), the United States warrants that any response action or corrective action found to be necessary after the date of this deed for contamination existing on the property prior to the date of this deed shall be conducted by the United States.

#### **B. Access Rights Pursuant to Section 120(h)(4)(D)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(ii)):**

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 or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response 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 and its successors and assigns and shall run with the land.

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 clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the grantee's and the grantee's successors' and assigns' quiet enjoyment of the property. At the completion of work, the work site shall be reasonably restored. 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.

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 clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

## **II. OTHER DEED PROVISIONS:**

### **A. "AS IS"**

1. 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.

2. 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.

3. 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.

### **B. HOLD HARMLESS**

1. 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.

2. 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.

3. 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.

### **C. POST-TRANSFER DISCOVERY OF CONTAMINATION**

1. If an actual or threatened release of a hazardous substance 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, its 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.

2. 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 on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance 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.

### **D. ENVIRONMENTAL PROTECTION PROVISIONS**

The Environmental Protection Provisions are at Enclosure 8, 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.

## ENCLOSURE 5

### 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. NOTICE OF THE POTENTIAL PRESENCE OF 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. Although an active training range is near (1/2 mile) the subject property to the east, the land being transferred is not part of a historical or active training range or impact area. Nonetheless, the geophysical survey of the property included a search for evidence of MEC. Based upon that report, no MEC was found.

A. 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.

#### B. 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.

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.

2. 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.

## **2. PESTICIDE NOTICE AND COVENANT**

The Grantee is hereby notified and acknowledges that registered pesticides may have been applied to the property conveyed herein and may continue to be present thereon. The Grantor and Grantee 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 Grantee covenants and agrees that if the Grantee 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, Grantee assumes all responsibility and liability therefore.