# FINDING OF SUITABILITY TO TRANSFER (FOST)

**Seneca Army Depot Activity** 

Airfield Access Road (Sutton Road), Airfield Parcel

06 June 2019

# Contents

	List of	Acronyms	ii
1.	PUI	RPOSE	1
2.	PRO	OPERTY DESCRIPTION	1
3.	EN	VIRONMENTAL DOCUMENTATION	1
4.	EN	VIRONMENTAL CONDITION OF PROPERTY	2
	4.1.	ENVIRONMENTAL REMEDIATION SITES	2
	4.2.	STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES	2
	4.3.	PETROLEUM AND PETROLEUM PRODUCTS	2
	4.4.	POLYCHLORINATED BIPHENYLS (PCB)	2
	4.5.	ASBESTOS	2
	4.6.	LEAD-BASED PAINT (LBP)	2
	4.7.	RADIOLOGICAL MATERIALS	2
	4.8.	RADON	3
	4.9.	MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)	3
	4.10.	OTHER PROPERTY CONDITIONS	3
5.	AD.	JACENT PROPERTY CONDITIONS	3
6.	EN	VIRONMENTAL REMEDIATION AGREEMENTS	4
7.	REC	GULATORY/PUBLIC COORDINATION	4
8.	NA'	TIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE	4
9.	FIN	DING OF SUITABILITY TO TRANSFER	5
10	). E	NCLOSURES	
	ENCL	OSURE 1 SITE MAP OF PROPERTY	
	ENCL	OSURE 2 ENVIRONMENTAL DOCUMENTATION	
	ENCL	OSURE 3 TABLE 1 – DESCRIPTION OF PROPERTY	
		OSURE 4 CERCLA NOTICE, COVENANT, AND ACCESS PROVISIONS AND OTHER DEED VISIONS	
	ENCL	OSURE 5 ENVIRONMENTAL PROTECTION PROVISIONS	
	1.	FEDERAL FACILITIES AGREEMENT	
	2.	PESTICIDE NOTICE AND COVENANT	

ENCLOSURE 6 REGULATORY / PUBLIC COMMENTS AND RESPONSE

# **List of Acronyms**

ACRONYM	DEFINITION	ACRONYM	DEFINITION
AD	Army Depot	MEC	Munitions and Explosives of Concern
AFFF	Aqueous Film Forming Foams	NEPA	National Environmental Policy Act
AST	Aboveground Storage Tank	NFA	No Further Action
BRAC	Base Realignment and Closure	NPL	National Priorities List
CERCLA	Comprehensive Environmental Response,	NY	New York
	Compensation, and Liability Act		
CERFA	Community Environmental Response Facilitation Act	NYSDEC	New York State Department of Environmental Conservation
CFR	Code of Federal Regulations	Parsons	Parsons Government Services, Inc.
DMM	Discarded Military Munitions	PCB	Polychlorinated Biphenyl
DoD	Department of Defense	PFAS	per- and polyfluoroalkyl substances
EBS	Environmental Baseline Survey	ppt	parts per trillion
ECL	Environmental Conservation Law	RCRA	Resource Conservation and Recovery Act
ECP	<b>Environmental Condition of Property</b>	ROD	Record of Decision
EOD	Explosive Ordnance Disposal	RDX	Hexahydro-1,3,5-trinitro-1,3,5-triazine
EPA	Environmental Protection Agency	SCIDA	Seneca County Industrial Development Agency
EPP	<b>Environmental Protection Provision</b>	SEDA	Seneca Army Depot Activity
ESI	Extended Site Investigation	SWMU	Solid Waste Management Unit
FFA	Federal Facility Agreement	TNT	2,4,6-Trinitrotoluene
FIFRA	Federal Insecticide Fungicide and Rodenticide Act	U.S.	United States
FOST	Finding of Suitability to Transfer	UST	Underground Storage Tank
FS	Feasibility Study	USEPA	United States Environmental Protection Agency
ft	Feet	UXO	Unexploded Ordnance
GW	Groundwater	VOCs	Volatile Organic Compounds
LBP	Lead Based Paint		
LUC	Land Use Control		

# FINDING OF SUITABILITY TO TRANSFER (FOST)

# Seneca Army Depot Activity, New York Airfield Access Road (Sutton Road), Airfield Parcel

June 2019

#### 1. PURPOSE

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of certain parcels or property at Seneca Army Depot Activity (SEDA) for transfer to the Seneca County Industrial Development Agency (SCIDA) 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 and the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment after such transfer.

# 2. PROPERTY DESCRIPTION

The property consists of 0.505 acres, which includes no buildings and includes half of an existing roadway and road shoulder. The property was previously used as a road for access to the SEDA Airfield. The property is intended to be transferred for continued use as a roadway and is consistent with the intended reuse of the property as set forth in the Seneca Army Depot Reuse Plan and Implementation Strategy prepared for Seneca County. A site map of the property is attached (Enclosure 1) (hereinafter referred to as "Property").

# 3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the Property was made based upon the Community Environmental Response Facilitation Act (CERFA) Report, dated March 22, 1996, as amended on December 6, 1996; an Environmental Baseline Survey (EBS), dated March 12, 1997, as revised on December 3,1997; a Final Investigation of Environmental Baseline Survey Non-Evaluated sites SEAD-199A, SEAD-122(A,B,C,D,E), SEAD-123(A,B,C,D,E,F), SEAD 46, SEAD-68, SEAD-120(A,B,C,D,E,F,G,H,I,J), and SEAD-121(A,B,C,D,E,F,G,H,I) dated May 1999; and the Environmental Condition of Property Report Update Sites SEAD-12, SEAD-46, SEAD-002-R-01, SEAD-70, and Airfield Access Road, dated April 01, 2019. 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 as follows:

ECP Category 1: Parcel B (to the Center line of Route 96-A) Former Sutton Road.

A summary of the ECP categories for parcels and the ECP category definitions are provided in Table 1 – Description of Property (Enclosure 3).

# 4.1. ENVIRONMENTAL REMEDIATION SITES

There are no environmental investigation/remediation sites and no evidence of groundwater contamination on the Property.

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

There is no evidence that hazardous substances were stored, released, or disposed of on the Property in excess of the 40 CFR Part 373 reportable quantities. The CERCLA § 120(h)(4) Covenant and Access Rights within Enclosure 4 will be included in the Deed.

# 4.3. PETROLEUM AND PETROLEUM PRODUCTS

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

There is no evidence that buildings or structures with asbestos-containing material (ACM) are located on the Property.

# 4.6. LEAD-BASED PAINT (LBP)

There is no evidence that buildings or structures with LBP are located 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**

There were no radon surveys conducted on the Property.

# 4.9. MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

Based on a review of existing records and available information, there is no evidence that Munitions and Explosives of Concern (MEC) are present on the Property, since the Property was used as a roadway to access the airfield and is not located in an area that was historically used for munitions testing or training. 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 (32 CFR § 179.3).

# 4.10. OTHER PROPERTY CONDITIONS

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

#### 5. ADJACENT PROPERTY CONDITIONS

The following other potentially hazardous conditions exist on adjacent property that is former SEDA property, part of the SEDA airfield parcel, and was transferred to SCIDA:

- SEAD-122B, Small Arms Range, Airfield Parcel No Further Action (NFA) with LUCs: Small Arms Range, Airfield Parcel (SEAD 122B). The Small Arms Range (SAR) is located in the southwest corner of SEDA adjacent to the SEDA Airfield. The Air Force, Navy, and Army previously used the SAR as small arms qualification ground. The SAR consist of two contiguous bermed small arms ranges, one previously used for small arms training and the other previously used for machine gun targeting. The Final ROD determined that LUCs were appropriate on this parcel to restrict residential land use.
- SEAD-122E, Plane Deicing Area NA with LUCs: Plane Deicing Area (SEAD 122E): The Plane Deicing Area is compromised of the three separate aircraft refueling areas at the former SEDA Airfield. All three of the deicing/refueling areas are located along the western side of the northwest-southeast runway. Two of the deicing/refueling pads are located near either end of the runway. The third deicing/refueling pad is located at the end of the short taxiway, west of the central portion of the runway. The general uses of SEAD 122E included the basic training of personnel and the operation of flights in support of the depot activities and security. The airfield was officially closed in 2000 and is no longer an active airfield, but is currently utilized by the NYS Police for training and special events. The Final ROD determined that LUCs were appropriate on this parcel to restrict residential land use.

Note that the former Airfield was the subject of a Site Inspection focused on emerging contaminants Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) in groundwater. The Airfield was selected for investigation because it was a location where Aqueous Film Forming Foams (AFFF) (e.g., firefighting foams) were potentially used. The inspection focused on likely areas of potential Army contamination: around the runway, fueling areas, and equipment storage. PFOA and PFOS levels were detected below the EPA recommended Health Advisory of 70 parts per trillion (ppt). After coordination with EPA and NYSDEC, the Army determined that no action was required at the airfield parcel.

Activities on the airfield parcel subsequent to Army ownership include: building demolition, use as a municipal fire training area (including construction of a "smoke tower", car fires, and mock propane tank fires), and police training involving high speed police driving activities. It is not certain what materials have been used in the fire training activities, but there does not appear to be a runoff collection system in place, which may be a source of groundwater contamination on lands adjacent to the Property to be transferred.

The presence of these hazards on adjacent property does not present an unacceptable risk to human health and the environment on the Property to be transferred because the Property will be used only as a roadway. No residential housing, elementary or secondary schools, child care facilities, or playgrounds are anticipated on the Property that is the subject of this FOST.

# 6. ENVIRONMENTAL REMEDIATION AGREEMENTS

The following environmental orders/agreements are applicable to the Property: Federal Facility Agreement under CERCLA Section 120. All remediation activities on the Property, required by such agreement are completed.

# 7. REGULATORY/PUBLIC COORDINATION

The U.S. EPA Region II, the New York State Department of Environmental Conservation, and the public were notified of the initiation of this FOST. Regulatory/public comments received during the public comment period will be reviewed and incorporated, as appropriate. A copy of the regulatory/public comments and the Army Response will be included at Enclosure 7.

# 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 Impact Statement for Base Realignment and Closure (BRAC) 95 Disposal and Reuse of property at the Seneca Army Depot Activity dated March 1998. The NEPA Record of Decision for the Disposal and Reuse of Seneca Army Depot Activity dated May 12, 1998 concluded that the Army's preferred alternative is to provide an encumbered title on all SEDA property transfers. Any encumbrances or conditions necessary to protect human health and the environment that was identified in the NEPA Record of Decision

have been incorporated into this FOST.

# 9. FINDING OF SUITABILITY TO TRANSFER

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. 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.

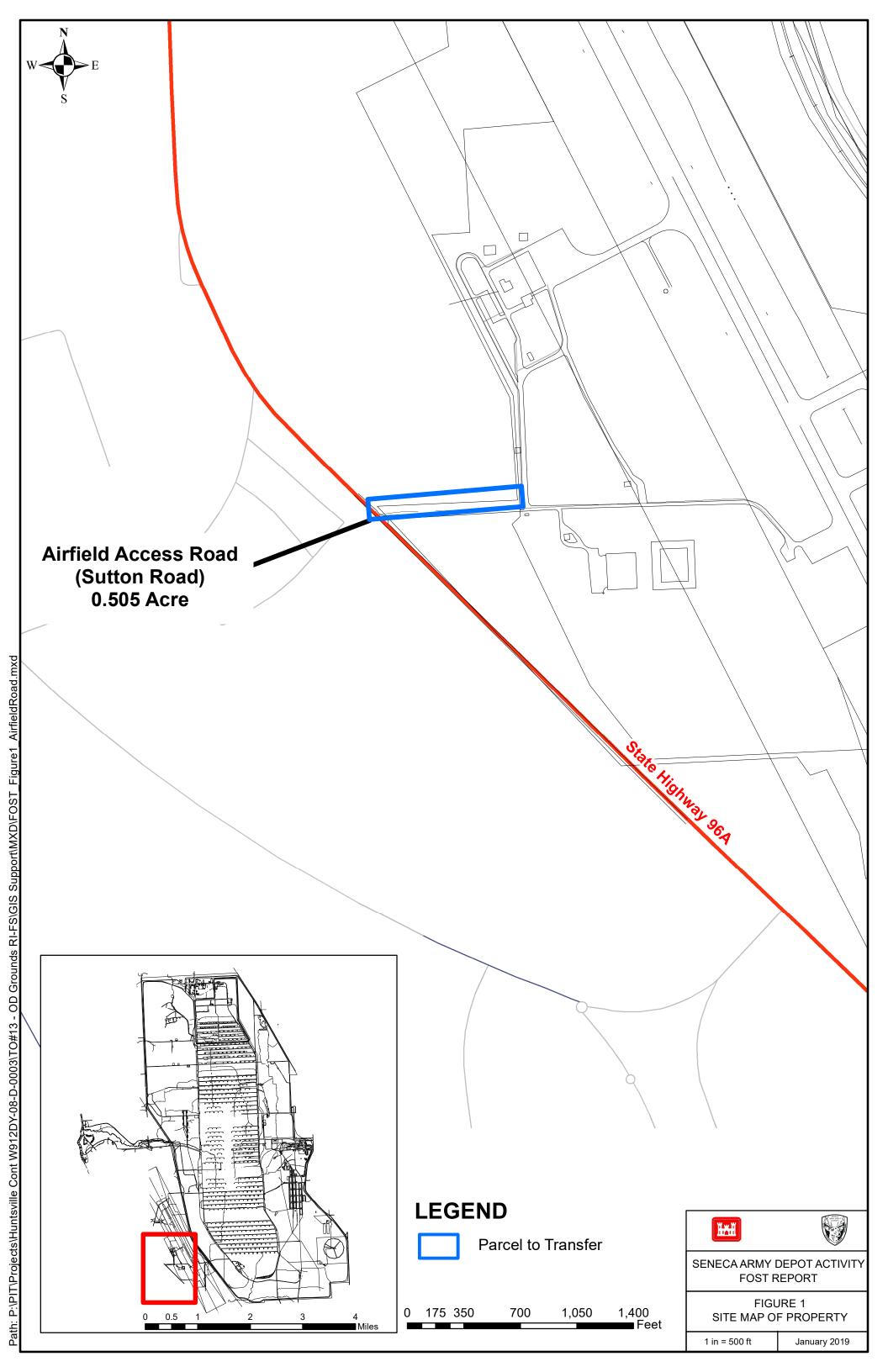
James E. Briggs Chief, Operations Branch U.S. Army Base Realignment and Closure Division

# 10. ENCLOSURES

- Encl 1 -- Site Map of Property
- Encl 2 -- Environmental Documentation
- Encl 3 -- Table 1 -- Description of Property
- Encl 4 -- CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions
- Encl 5 -- Environmental Protection Deed Provisions
- Encl 6 Regulatory/Public Comments and Reponses

# SITE MAP OF PROPERTY

Enclosure 1 Page 1 of 2



# **ENVIRONMENTAL DOCUMENTATION**

- 1. SEDA's Bulk Petroleum Storage registration dated January 14, 2002.
- 2. New York State Department of Environmental Conservation (NYSDEC) Region 8 spill list.
- 3. SEDA Ordnance and Explosives Archives Search Report dated December 1998.
- 4. Final Investigation of Environmental Baseline Survey Non-Evaluated sites SEAD-199A, SEAD-122(A,B,C,D,E), SEAD-123(A,B,C,D,E,F), SEAD 46, SEAD-68, SEAD-120(A,B,C,D,E,F,G,H,I,J), and SEAD-121(A,B,C,D,E,F,G,H,I) dated May 1999.
- 5. NEPA Record of Decision for the Disposal and Reuse of Seneca Army Depot Activity dated May 12, 1998.
- **6.** Final Record of Decision for 17 No Action/No Further Action SWMUs Requiring Land Use Controls (SEADs 13, 39, 40, 41, 43/56/69, 44A, 44B, 52, 62, 64B, 64C, 64D, 67, 122B and 122E dated July 25, 2007.
- 7. 2017 PFAS Site Inspection Report for the Fire Training and Demonstration Pad (SEAD 25), Fire Training Pit and Area (SEAD 26) and Airfield and Refueling Pads (SEAD 122E), Seneca Army Depot Activity, Romulus, New York. Final (Parsons, 2018).
- 8. Environmental Condition of Property Report Update Sites SEAD-12, SEAD-46, SEAD-002-R-01, SEAD-70, and Airfield Access Road, dated April 01, 2019 (Parsons, 2019).

Enclosure 2 Page 1 of 1

# TABLE 1 – DESCRIPTION OF PROPERTY

Building Number and Property Description	EBS Parcel Designation	Condition Category	
Parcel B (to the Center line of Route 96-A) Former Sutton Road		1	None

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

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

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

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

Enclosure 3 Page 1 of 1

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

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

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, testpitting, 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

Enclosure 4 Page 1 of 2

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"

- a. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.
- b. No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain any conditions on the Property. 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 conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.
- c. Nothing in this "As Is" provision will be construed to modify or negate the Grantor's obligation under the "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))", or any other statutory obligation.

Enclosure 4 Page 2 of 3

#### **B. HOLD HARMLESS**

- a. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the notices, use restrictions, and restrictive covenants in this Deed by the Grantee, its successors and assigns, and (2) any and all any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to any condition on any portion of the Property after the date of conveyance.
- b. The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the notices, use restrictions, and restrictive covenants in this Deed, including without limitation, any costs associated with additional investigation or remediation of any condition on any portion of the Property.
- c. Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor's obligation under the "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))", or any other statutory obligation.

# C. POST-TRANSFER DISCOVERY OF CONTAMINATION

- a. If an actual or threatened release of a hazardous substance is discovered on the Property after the date of the conveyance herein, the Grantee, its successors or assigns shall be responsible for such release or threatened release of such newly discovered hazardous substance unless the Grantee, its successors or assigns is able to demonstrate that such release or threatened release of a hazardous substance was due to the Grantor's activities, use, or ownership of the Property. If the Grantee, or its successors or assigns believe the newly discovered hazardous substance is due to the Grantor's activities, use, or ownership of the Property, the Grantee, or its successors or assigns shall immediately secure the site and notify the Grantor of the existence of the hazardous substance, and the Grantee, or its successors or assigns shall not further disturb or allow the disturbance of such hazardous substance without the prior written permission of the Grantor.
- b. The Grantee, for itself, its successors and assigns, as part of the consideration for the conveyance of the Property, hereby releases the Grantor from any liability or responsibility for any claims arising solely out of the release or threatened release of any hazardous substance on the Property occurring after the date of the conveyance herein where such hazardous substance was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents, contractors, or any person other than the Grantor after the date of the conveyance herein. This "Post-Transfer Discovery of Contamination" provision shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor's obligations under the "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))."

Enclosure 4 Page 3 of 4

# D. ENVIRONMENTAL PROTECTION PROVISIONS

The Environmental Protection Provisions are provided in Enclosure 5, 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 4 Page 4 of 4

#### ENVIRONMENTAL PROTECTION PROVISIONS

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

#### 1. FEDERAL FACILITIES AGREEMENT

The Grantor acknowledges that the Seneca Army Depot Activity has been identified as a National Priorities List (NPL) site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the Grantor has provided it with a copy of the Seneca Federal Facility Agreement (FFA) dated January 23, 1993. For so long as the Property remains subject to the FFA, the Grantee, its successors and assigns, agree that they will not interfere with United States Department of the Army activities required by the FFA. In addition, should any conflict arise between the FFA and any amendment thereto and the deed provisions, the FFA provisions will take precedence. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with their use of the Property.

# 2. PESTICIDE NOTICE AND COVENANT

The Grantee is hereby notified and acknowledges that registered pesticides 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 therefor.

Enclosure 5 Page 1 of 1

# REGULATORY / PUBLIC COMMENTS AND RESPONSE

Enclosure 6 Page 1 of 1