

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

Niagara Falls United States Army Reserve Center (NY046)

**9400 Porter Road
Niagara Township, New York**

January 2018

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1. PURPOSE

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of Property at the former Niagara Falls United States Army Reserve Center (USARC), located in Niagara Township, Niagara County, New York, for transfer to the Town of Niagara Local Redevelopment Authority (LRA) consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense (DOD) policy. In addition, the FOST includes 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 approximately 19.85 acres of land, which includes eleven permanent structures briefly listed below:

- Building 4: A multi-story, 85,800 square foot (SF) hangar and administrative building.
- Building 17: A concrete block, petroleum, oil, lubricants (POL) shed.
- Building 18: A single-story, 9,720 SF maintenance building.
- Building 19: A single-story, 1,600 SF storage building.
- Building 20: A single-story, 2,133 SF storage building.
- Building 21: A single-story, 13,055 SF multi-use building.
- Building 22: A multi-story, 20,703 SF multi-use building.
- Building 23: A single-story, 2,058 SF storage building.
- Building 24: A single-story, 2,400 SF storage building.
- Building 25: A single-story, 1,504 SF storage building.
- Building 26: A single-story, 2,150 SF storage building

The Property also includes a military equipment parking (MEP) area and a military vehicle parking area (MVPA) in the eastern portion of the Property, a privately owned vehicle (POV) parking area west of Building 4, and a small guard shack located at the main entry point from Porter Road. The Property was previously used for administrative, training, logistical, and maintenance purposes. Sections 2 and 3 of the 2007 Environmental Condition of Property (ECP) Report provide additional physical description and past use information. The Property is intended to be transferred to the Town of Niagara by quitclaim deed under the economic development conveyance authority. The LRA intends to lease or sell portions of the property for office use, light industrial use, and other like-use, consistent with the Redevelopment Plan prepared by the Town of Niagara Local Redevelopment Authority. Enclosure 1 provides a site map of the Property. The quitclaim deed shall prohibit residential use of the property.

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the Property was made based upon the April 2007 Environmental Condition of Property (ECP) Report, the October 2012 ECP Update Report, and the January 2018 Final ECP Update Report. The information provided is a result of a search of agency files during the development of these environmental surveys.

A 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 4: Entire Parcel

A summary of the ECP category is provided in Table 1 – Description of Property (Enclosure 3).

4.1. ENVIRONMENTAL REMEDIATION SITES

There were two remediation sites located on the Property. The first site, 1991 Polychlorinated Biphenyl (PCB)-Contaminated Transformer Oil Spill, encompassed the area beneath a pole-mounted transformer that was once located east of Building 22. The second site, Outfall No. 5, encompassed the vicinity of a cast iron fire protection main, the 500,000-gallon reservoir, and the 24-inch corrugated metal storm sewer line located on the eastern boundary, along with the drainage swale located immediately south of the Site. All environmental remediation activities on the property have been completed. A summary of the remedial actions for these sites is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 4). Due to the Property's location adjacent to airport taxiways and in or near a Runway Safety Area and in accordance with the final 2015 ROD for Outfall No. 5, the deed will include a restriction prohibiting use of the Property for residential purposes.

4.2. STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES

There is no evidence that hazardous substances were stored for one year or more on the Property in excess of reportable quantities specified in 40 CFR Part 373. Hazardous substances have been released on the Property in excess of the 40 CFR 373 reportable quantities at the following sites: 1) 1991 PCB Oil Spill; and 2) Outfall No. 5. The release of hazardous substances was remediated at the time of the release and/or as part of the Base Realignment and Closure Environmental Restoration Program (BRAC-ER). See Subsection 4.1, Environmental Remediation Sites, for additional information. A summary of the areas in which hazardous substance releases occurred is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 4). The CERCLA 120(h)(3) Notice, Description, and Covenant at Enclosure 6 will be included in the Deed.

4.3. PETROLEUM AND PETROLEUM PRODUCTS

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

- **Current UST/AST Sites** – There are no underground storage tanks (USTs) on the Property. One 528-gallon above-ground storage tank (AST) is located at Building 17 on the Property. There is no evidence of petroleum releases from the AST site.
- **Former UST/AST Sites** – There were 12 underground and three (3) above-ground storage tanks (USTs/ASTs) on the Property that have been removed. Petroleum product releases occurred at the following sites: 1) 550-Gallon Waste Oil UST - South of the Building 18 Wash Rack; and 2) 1,000-Gallon Waste Oil UST – Near Southwest Corner of Building 4S. The release of petroleum products from these two USTs was remediated as part of UST closure in 1999. See Subsection 3.5.2 and Appendix D of the 2007 ECP Report for additional information, including the *Closure Report Underground Storage Tank Removals*, dated 14 December 1999.

A summary of the UST/AST petroleum activities is provided in Table 3 – Notification of Petroleum Products Storage, Release, or Disposal (Enclosure 5).

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

Non-UST/AST petroleum products in excess of 55 gallons were stored for one year or more on the Property. The petroleum products were used for maintenance of military vehicles and equipment and were stored in: Building 17; Building 19; two storage sheds once located northeast of Building 21 within the MEP area; and two storage sheds once located east of Building 18 in the MPVA. All non-UST/AST petroleum product storage operations have been terminated on the Property. There was no evidence of petroleum releases in excess of 55 gallons as a result of these activities.

A summary of the non-UST/AST petroleum activities is provided in Table 3 – Notification of Petroleum Products Storage, Release, or Disposal (Enclosure 5).

4.4. POLYCHLORINATED BIPHENYLS (PCB)

There is no evidence that PCB-containing equipment is currently located on the Property. There is evidence of a release from a PCB-contaminated transformer (250 ppm) at the following site: 1991 Polychlorinated Biphenyl (PCB) Oil Spill. This site encompassed the area beneath a pole-mounted transformer that was once located east of Building 22. The PCBs were remediated at the time of the release. The NYSDEC provided a letter, dated 19 February 1992, to confirm that no further action was necessary for the spill. See Subsection 3.3.2 of the 2007 ECP Report for additional information.

A second release of PCB-containing product occurred in 2008 at the Property's Outfall No. 5 remediation site, which encompasses the vicinity of a cast iron fire protection main, the 500,000-gallon reservoir, and the 24-inch corrugated metal storm sewer line located on the eastern boundary, along with the drainage swale located immediately south of the Site. All environmental remediation activities associated with this site have been completed and the NYSDEC provide a letter, dated 27 March 2015, to concur with the No Further Action

determination for the site. See Enclosure 8 for the Final No Further Action Record of Decision document.

4.5. ASBESTOS

There is confirmed or assumed asbestos-containing material (ACM) in the following buildings: 4, 17, 18, 19, 20, 21, 22, 23, 25, 26, and the Guard Shack. The ACM includes: pipe insulation, floor tiles, fire doors, stair treads, mastic, coving, ceiling tiles, vault doors, window and door caulking, roof materials, sheetrock joint compound, and window glazing. Of these buildings, friable ACM has been determined to be present in Buildings 4, 19, and 22. For more information see Appendix O of the 2017 ECP Report Update for the November 2017 *Asbestos Visual Inspection Report* for the Property.

An inspection of ACM locations in 2013 revealed water damage to walls and asbestos-containing ceiling and floor tiles in numerous rooms within the administrative portions of Building 4 (4N and 4S). The water damage was due to roof damage that was sustained in April 2012. A repair contract was awarded in 2014 to isolate, remediate, and repair the water-damaged confirmed asbestos-containing material (CACM) and assumed asbestos-containing material (AACM) inside of Building 4N and 4S. The contractor was required to be certified in the State of New York to conduct asbestos abatement. Third-party certified air monitoring was also required during the remediation activities. The scope of work included remediation confirmed asbestos-containing material (CACM) and assumed asbestos-containing material (AACM) of approximately 13,000 square feet of damaged asbestos-containing floor tile (six Building 4N rooms and 27 Building 4S rooms/spaces) and 1,500 square feet of AACM ceiling tiles (three Building 4N rooms and eight Building 4S rooms/spaces). This ACM remediation work was completed in December 2015.

Any remaining friable asbestos that has not been removed or encapsulated will not present an unacceptable risk to human health because the transferee assumes responsibility for any abatement or management of ACM required in accordance with applicable federal, state, and local requirements. The deed will include an asbestos warning and covenant in the Environmental Protection Provisions (Enclosure 7).

4.6. LEAD-BASED PAINT (LBP)

The following buildings are known or presumed to contain lead-based paint (LBP): 4, 18, 19, 20, 21, 22, 23, 25, and 26. The Property was not used for residential purposes and the transferee cannot use the Property for residential purposes in the future. The deed will include a lead-based paint warning and covenant included in the Environmental Protection Provisions (Enclosure 7).

4.7. INDOOR FIRING RANGES

There is no evidence that an indoor firing range ever existed on the Property.

4.8. RADIOLOGICAL MATERIALS

The following buildings were used for radiological activities: Building 20, where radiation detection, indication, and computation (RADIAC) meters and chemical agent monitoring equipment were stored. There is no evidence of any release of radiological materials on the Property. All radioactive materials have been removed from the Property. In September 2011, the Army conducted a radiological site assessment of the Property in compliance with the accepted protocol. The December 2011 *Final Radiological Site Assessment Report* found no evidence to suggest that any radiological commodities were improperly managed on the Property or that any residual radiological material is present on the Property. The report concluded that no further action is required with respect to the radioactive devices or materials identified. On 22 December 2011, the U.S. Army Joint Munitions Command concluded the Property is free of radiological concerns and that no further action is required with respect to past management of radioactive devices or materials on the Property. See Section 6.0 and Appendix D of the 2012 ECP Update Report for additional information.

4.9. RADON

Radon surveys were conducted at the Property (specific building locations were not provided in the survey). Radon was not detected above the EPA residential action level of 4 picocuries per liter (pCi/L) in surveyed buildings. See Subsection 6.8 of the 2007 ECP Report for additional information.

4.10. 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 Property has historically been used as an administrative and maintenance facility and there is no evidence that munitions-related activities or disposal occurred on the Property. The term “MEC” means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

4.11. OTHER PROPERTY CONDITIONS

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

5. ADJACENT PROPERTY CONDITIONS

There are no known conditions adjacent to the Property that 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. The quitclaim deed will also include a provision reserving the Army's right to conduct remediation activities if necessary in the future (Enclosure 6).

7. REGULATORY/PUBLIC COORDINATION

The U.S. EPA Region 2, the NYSDEC, and the public were notified of the initiation of this FOST. Regulatory/public comments received during the public comment period have been reviewed and incorporated, as appropriate. A copy of the regulatory and public comments and the Army Response have been included in Enclosure 9.

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 May 2012 *Environmental Assessment For BRAC 05 Recommendation for Closure, Disposal and Reuse of U.S. Army Reserve Center and Army Maintenance Support Activity #76* and the *Finding of No Significant Impact*, signed on 12 March 2013. There were no encumbrances or conditions identified in the NEPA analysis as necessary to protect human health or the environment.

9. FINDING OF SUITABILITY TO TRANSFER

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

FOST SIGNATURE:



Thomas E. Lederle
Chief, BRAC Division
Assistant Chief of Staff for Installation Management
Headquarters, Department of Army

19 JANUARY 2018
Date

Enclosures

Encl 1 -- Site Map of Property

Encl 2 -- Environmental Documentation

Encl 3 -- Table 1 -- Description of Property

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

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

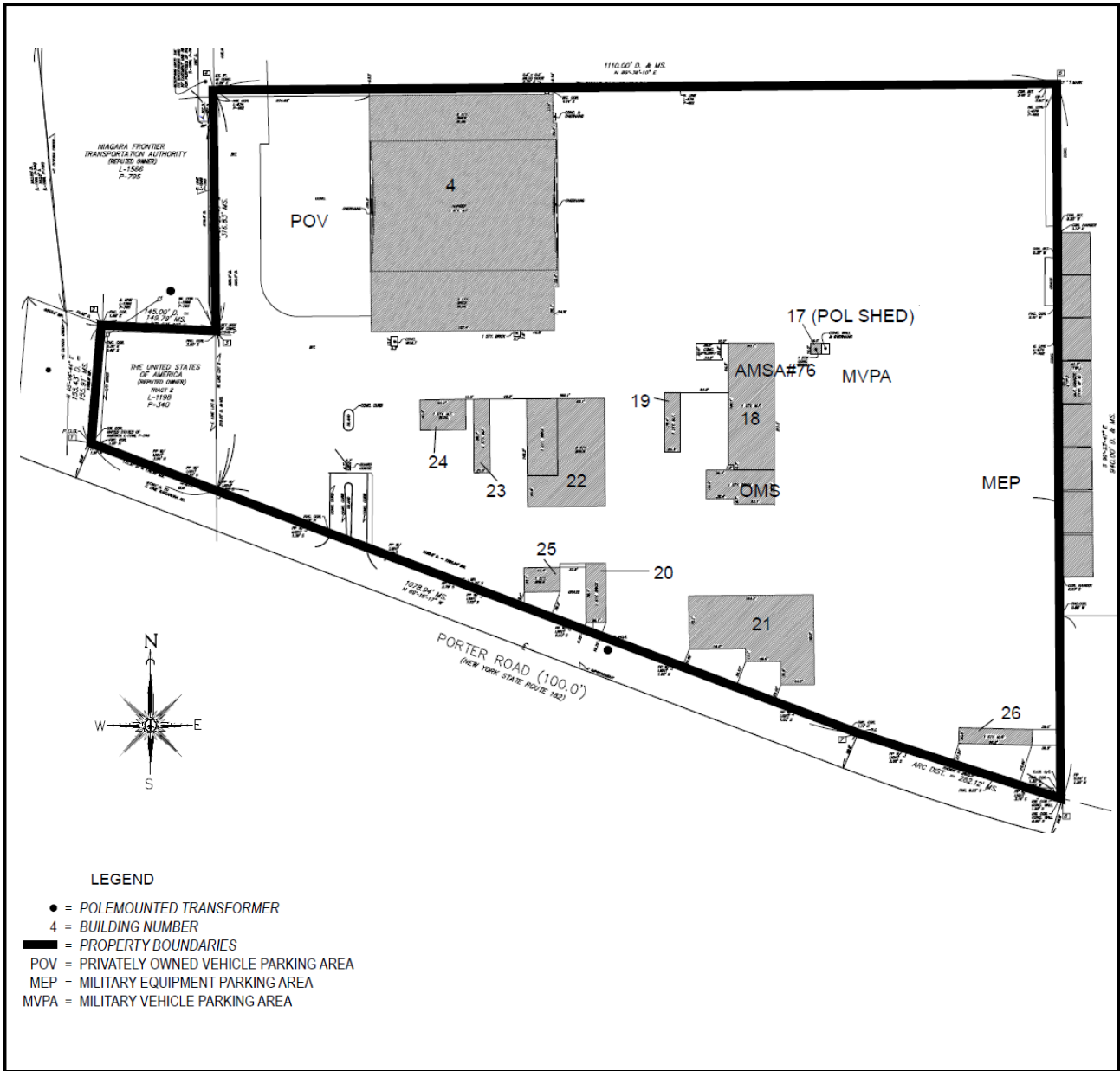
Encl 6 -- CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions

Encl 7 -- Environmental Protection Provisions

Encl 8 -- 27 March 2015 NYSDEC No Further Action Letter

Encl 9 -- Regulatory/Public Comments & Army Response

ENCLOSURE 1 - SITE MAP OF PROPERTY



LEGEND

- = POLEMOUNTED TRANSFORMER
- 4 = BUILDING NUMBER
- = PROPERTY BOUNDARIES
- POV = PRIVATELY OWNED VEHICLE PARKING AREA
- MEP = MILITARY EQUIPMENT PARKING AREA
- MVPA = MILITARY VEHICLE PARKING AREA

ENCLOSURE 2

ENVIRONMENTAL DOCUMENTATION

Document	Source
Environmental Condition of Property Report Niagara Falls U.S. Army Reserve Center (NY046) Niagara Falls, New York, prepared by CH2M Hill July 2007	USACE
Environmental Condition of Property Update Report, Niagara Falls U.S. Army Reserve Center (NY046) Niagara Falls, New York, prepared by XCEL Engineering October 2012	USACE
Final Environmental Condition of Property Update Report, Niagara Falls U.S. Army Reserve Center (NY046) Niagara Falls, New York, prepared by USACE Louisville District, January 2018.	USACE

ENCLOSURE 3

TABLE 1 – DESCRIPTION OF PROPERTY

ECP Parcel Designation	Condition Category	Building Number / Site Description	Remedial Actions
Entire Property	4*	Storm Drain, East of Building 22	Complete. In 1991, a PCB-contaminated transformer fell and broke over a storm sewer drain, east of Building 22. Oil containing 250 ppm PCB spilled on the pavement and into the drain. Surface paving materials, soils, and storm drain materials were remediated after the spill. The New York State Department of Environmental Conservation (NYSDEC) provided a letter, dated 19 February 1992, to confirm that no further action was necessary for the spill. The letter also confirmed that the NYSDEC incident file for this spill, Spill Number 9106446, was closed.
		Outfall 5**	Complete. On June 24, 2008, a yellow substance was identified in the drainage swale along Porter Road, near the Property’s southeast storm water discharge outlet, Outfall 5. The released material was found to contain PCBs and NYSDEC established the release as Spill Number 0803478. Delineation and investigative activities identified PCBs in soil samples at a maximum concentration of 1,060 parts per million (ppm). Approximately 134 tons of PCB-impact soils were excavated from the outfall and drainage swale to meet the clean-up level of 1 ppm. Subsequent investigations in the eastern portion of the Property led to the removal of an additional 40 tons of soil and 2,000 gallons of groundwater from the vicinity of the 24-inch discharge pipe that runs along the eastern Property boundary and empties at Outfall 5. All remedial actions have been completed and NYSDEC granted closure of the spill incident on 17 May 2012. A No Further Action Record of Decision (ROD) for the area of concern was signed on 3 April 2015.
		550-Gallon UST	Complete. A 550-gallon waste oil UST, located adjacent to the Building 19 wash rack, was removed on 20 September 20 1999. Soil sampling from the

ECP Parcel Designation	Condition Category	Building Number / Site Description	Remedial Actions
		South of the Building 18 Wash Rack	excavation sidewall and floor identified trichloroethene (TCE) at levels below the NYSDEC TAGM 4046 Protection of Groundwater Soil Cleanup Objective, which was applicable at that time (and also below the current 6 NYCRR Part 375 Unrestricted Use Soil Cleanup Objective). NYSDEC granted the spill a "Closed" status on 22 February 2000.
		1,000-Gallon UST Southwest Corner of Building 4	Complete. A 1,000-gallon waste oil UST, associated with the Building 4 oil/water separator was removed on 14 September 1999. Soil and water samples collected from the excavation indicated the presence of polyaromatic hydrocarbons (PAHs) at concentrations exceeding NYSDEC guidance values. However, all detections of PAHs were significantly less than the recommended soil cleanup objective. NYSDEC granted this spill a "Closed" status on 22 February 2000.

* Category 4: An area or parcel of real property where release, disposal, or migration, or some combination thereof, of hazardous substances has occurred, and all remedial actions necessary to protect human health and the environment have been taken

** Location of Former Building 2, the Former Fire Protection Main and Reservoir Area, the 24-Inch Storm Sewer Pipe, and Outfall 5 shown below



ENCLOSURE 4

TABLE 2 – NOTIFICATION OF HAZARDOUS SUBSTANCE STORAGE, RELEASE, AND DISPOSAL*

Location	Name of Hazardous Substance	Date of Storage, Release, or Disposal	Remedial Actions
East of Building 22	PCBs	1991	Complete. In 1991, a PCB-contaminated transformer fell and broke over a storm sewer drain, east of Building 22. Oil containing 250 ppm PCB spilled on the pavement and into the drain. Surface paving materials, soils, and storm drain materials were remediated after the spill. The New York State Department of Environmental Conservation (NYSDEC) provided a letter, dated 19 February 1992, to confirm that no further action was necessary for the spill. The letter also confirmed that the NYSDEC incident file for this spill, Spill Number 9106446, was closed.
Eastern Portion of the Property** Former Building 2, Former Fire Protection Main and Reservoir Area, 24-Inch Storm Sewer Pipe, and Outfall 5	PCBs	2008	Complete. On June 24, 2008, a yellow substance was identified in the drainage swale along Porter Road, near the Property’s southeast storm water discharge outlet, Outfall 5. The released material was found to contain PCBs and NYSDEC established the release as Spill Number 0803478. Delineation and investigative activities identified PCBs in soil samples at a maximum concentration of 1,060 parts per million (ppm). Approximately 134 tons of PCB-impact soils were excavated from the outfall and drainage swale to meet the clean-up level of 1 ppm. Subsequent investigations in the eastern portion of the Property led to the removal of an additional 40 tons of soil and 2,000 gallons of groundwater from the vicinity of the 24-inch discharge pipe that runs along the eastern Property boundary and empties at Outfall 5. All remedial actions have been completed and NYSDEC granted closure of the spill incident on 17 May 2012. A No Further Action Record of

Location	Name of Hazardous Substance	Date of Storage, Release, or Disposal	Remedial Actions
			Decision (ROD) for the area of concern was signed on 3 April 2015.
<p>* The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or 'Superfund') 42 U.S.C. §9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance's CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 CFR Part 373.</p> <p>** Enclosure 3 provides a layout of the location of Former Building 2, the Former Fire Protection Main and Reservoir Area, the 24-Inch Storm Sewer Pipe, and Outfall.</p>			

ENCLOSURE 5

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

Location	Name of Petroleum Product(s)	Date of Storage, Release, or Disposal	Remedial Actions
3,000-gallon UST, location not documented	Gasoline	~1950s - 1990	Closed. Tank removed July 1, 1990.
10,000-gallon vaulted UST, location not documented	Fuel Oil	~1950s - 1991	Closed. Removed October 1, 1991.
20,000-gallon vaulted UST, location not documented	Fuel Oil	~1950s - 1991	Closed. Removed October 1, 1991.
550-Gallon UST, south of the Building 18 Wash Rack	Waste Oil	~1950s - 1999	Closed. A 550-gallon waste oil UST, located adjacent to the Building 19 wash rack, was removed on 20 September 20 1999. Soil sampling indicated trichloroethene (TCE) exceeding the NYSDEC allowable soil concentration, but less than the Soil Cleanup Objective. NYSDEC granted the spill a “Closed” status on 22 February 2000.
1,000-Gallon UST, Southwest Corner of Building 4	Waste Oil	~1950s - 1999	Closed. A 1,000-gallon waste oil UST, associated with the Building 4 oil/water separator was removed on 14 September 1999. Soil and water samples collected from the excavation indicated the presence of polyaromatic hydrocarbons (PAHs) at concentrations exceeding NYSDEC guidance values. However, all detections of PAHs were significantly less than the recommended soil cleanup objective. NYSDEC granted this spill a “Closed” status on 22 February 2000.

Location	Name of Petroleum Product(s)	Date of Storage, Release, or Disposal	Remedial Actions
“Large” UST near Building 21	Gasoline	~1950s – 1984/1985	Closure documents not available. Tanks reportedly removed in 1984 or 1985.
250- or 400-gallon UST near Building 18 Wash Rack	Waste Oil	~1950s – mid 1990s	Closed. Removed in mid-1990s.
600-gallon UST at Building 4	Waste Oil	~1950s – 1984/85	Closed. Removed in 1984 or 1985.
250-gallon AST at Building 19	Fuel Oil	~1950s – 1989/1990	Removed 1989 or 1990; no evidence of release associated with this former AST site.
250-gallon AST at Building 23	Fuel Oil	~1950s – 1989/1990	Removed 1989 or 1990; no evidence of release associated with this former AST site.
250-gallon AST at Building 26	Fuel Oil	~1950s – 1989/1990	Removed 1989 or 1990; no evidence of release associated with this former AST site.
Two 20,000-gallon USTs, Building 4	Unknown	~1950s – 1987/88	Closed. Removed 1987 or 1988.
Two 25,000-gallon USTs, Building 25	Heating Oil	~1950s – 1987/88	Closure documents not available. Tanks reportedly removed/closed 1987 or 1988.

ENCLOSURE 6

CERCLA COVENANT, ACCESS PROVISIONS AND OTHER DEED PROVISIONS

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

DEPARTMENT OF DEFENSE UNIFORM NOTICE, DESCRIPTION, ACCESS RIGHTS, AND COVENANTS FOR SECTION 120(H)(3) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. § 9620(h)(3))

I. Property Covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)):

For the Property, the Grantor provides the following notice, description, and covenants and retains the following access rights:

A. Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)):

Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in Exhibit ____, Notification of Hazardous Substance Storage, Release, and Disposal, attached hereto and made a part hereof.

B. Description of Remedial Action Taken, if Any, Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)):

Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the property is provided in Exhibit ____, Notification of Hazardous Substance Storage, Release, and Disposal, attached hereto and made a part hereof.

C. Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)):

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

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

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

D. Access Rights Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(iii)):

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 a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, 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 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 or employee 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 asbestos or lead-based paint. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos, lead-based paint, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

c. Nothing in this "As Is" provision will be construed to modify or negate the Grantor's obligation under the "Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B))" or any other statutory obligations.

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 asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.

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

c. Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor's obligation under the "Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(ii) and (B))" or any other statutory obligations.

C. POST-TRANSFER DISCOVERY OF CONTAMINATION

a. If a release or threatened release of a hazardous substance is discovered on the Property after the date of conveyance herein, Grantee, its successors or assigns shall be responsible for such

newly discovered release or threatened release of a hazardous substance unless Grantee or its successors or assigns is able to demonstrate that such release or threatened release of a hazardous substance was due to 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 release or threatened release of the hazardous substance, and the Grantee or its successors or assigns shall not further disturb or allow the disturbance of such hazardous substances 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 other person other than the Grantor after the conveyance herein. This "Post-Transfer Discovery of Contamination and Release" 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)(3)(A)(ii) and (B) of the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B))."

D. ENVIRONMENTAL PROTECTION PROVISIONS

The Environmental Protection Provisions in Exhibit ____ will be inserted into the property transfer deed. 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 7

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. LAND USE RESTRICTION

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

Residential Use Restriction. The Grantee, its successors and assigns, shall not use the property for residential purposes. For purposes of this provision, residential use includes, but is not limited to, single family or multi-family residences; pre-school and child care facilities; playgrounds whether or not related to non-residential facilities; nursing home or assisted living facilities; and any type of educational facility for children/young adults in grades kindergarten through 12.

B. Modifying Restrictions. Nothing contained herein shall preclude the Grantee, its successors or assigns, from undertaking, in accordance with applicable laws and regulations and without any cost to the Grantor, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Grantee shall consult with and obtain the approval of the Grantor, and, the New York State Department of Environmental Conservation (NYSDEC). Upon the Grantee's obtaining the approval of the Grantor and NYSDEC, the Grantor agrees to record an amendment hereto. This recordation shall be the responsibility of the Grantee and at no additional cost to the Grantor.

C. Submissions. The Grantee, its successors and assigns, shall submit any requests to modifications to the above restrictions to Grantor and NYSDEC, by first class mail, postage prepaid, addressed as follows:

a. Grantor – United States Army Corps of Engineers, Real Estate Division,
Attention: CENAN-RE, 26 Federal Plaza, 20th Floor, Room 2007, New York,
New York, 10278.

b. New York State Department of Environmental Conservation, Division of
Environmental Remediation, Remedial Bureau E, 625 Broadway, 12th Floor,
Albany, New York 12233-7015

2. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

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

B. The following buildings on the Property has (have) been determined to contain friable asbestos: 4, 19, and 22. The Grantee agrees to undertake any and all asbestos abatement or remediation in the aforementioned buildings that may be required under applicable law or regulation at no expense to the Grantor. The Grantor has agreed to transfer said buildings to the Grantee, prior to remediation or abatement of asbestos hazards, in reliance upon the Grantee’s express representation and covenant to perform the required asbestos abatement or remediation of these buildings.

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

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

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

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

B. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Property, as defined under 24 Code of Federal Regulations Part 35, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

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

4. 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 8

27 MARCH 2015 NYSDEC NO FURTHER ACTION LETTER

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Remedial Bureau A
625 Broadway, 12th Floor, Albany, NY 12233-7015
P: (518) 402-9625 | F: (518) 402-9627
www.dec.ny.gov

March 27, 2015

Mr. Thomas Lineer
BRAC Division
Office of the Assistant Chief of Staff for Installation Management
Department of the Army
600 Army Pentagon
Washington, DC 20310-0600

Re: Niagara Falls US Armed Forces
Reserve Center, Site # 932152

Dear Mr. Lineer:

The New York State Department of Environmental Conservation and the New York State Department of Health have reviewed the February 2015 No Further Action Record of Decision for the Niagara Falls US Armed Forces Reserve Center. The State concurs with the remedy selection documented in this Record of Decision.

The future reuse within the area of the Site where the Areas of Concern are located includes a paved parking lot and commercial building. Residential use of the Site is not reasonably anticipated due to the close proximity to the airport runways, hangers, and taxiway as well as the adjacent light industrial zoning and the Town of Niagara Local Reuse Authority's future use for commercial/industrial purposes. A restriction prohibiting residential land use and groundwater use will be included in the deed transferring the Site.

If you have any questions, please contact Mr. John Swartwout at (518)402-9620.

Sincerely,



James B. Harrington, P.E. Director
Remedial Bureau A
Division of Environmental Remediation

Ec: J. Swartwout, NYSDEC
C. Doroski, NYSDOH
R. Ramsdell, US Army

ENCLOSURE 9

REGULATORY/PUBLIC COMMENTS AND ARMY RESPONSE

Response To Regulatory and Public Comments
March 2016 Finding of Suitability to Transfer (FOST)

Niagara Falls United States Reserve Center (NY046), Niagara Township, New York

Agency/ Document Location	Comment	Response
<p>New York State Department of Environmental Conservation (NYSDEC)</p> <p>Enclosure 3 Table 1</p>	<p>Enclosure 3 Table 1, Description of Property – The Remedial Actions description for the ‘550-Gallon UST South of the Building 18 Wash Rack’ is very confusing. Based on my review of the detailed information included on page 3-9 of the July 2007 Final Environmental Condition of Property Report I request that the description be edited to read: “Complete. A 550-gallon waste oil UST, located adjacent to the Building 19 wash rack, was removed on 20 September 20 1999. Soil sampling from the excavation sidewall and floor identified trichloroethene (TCE) at levels below the NYSDEC TAGM 4046 Protection of Groundwater Soil Cleanup Objective, which was applicable at that time (and also below the current 6 NYCRR Part 375 Unrestricted Use Soil Cleanup Objective). NYSDEC granted the spill a “Closed” status on 22 February 2000.”</p>	<p>Concur. The description has been edited as requested.</p>
<p>United States Environmental Protection Agency (USEPA) Region 2</p> <p>General Comment</p>	<p>The FOST provides a discussion of all environmental factors and concerns associated with the property. Releases of an emerging contaminant, Per- and Polyfluoroalkyl Substances (PFASs), have been detected at many federally-owned facilities. Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) are well-known examples of PFASs that are found in various fire-fighting foam agents and are often referred to as Perfluorinated Compounds (PFCs). Therefore, EPA requests a discussion as to whether PFCs were used at the site and, if so, whether any releases may have occurred.</p>	<p>No evidence has been found to indicate that PFCs were used or stored at the site during past site operations. The 2007 ECP Report states that the Army acquired the property from the Navy in 1962, so Air Support Facility (ASF) operations at the site would have ceased prior to the use of PFCs at ASFs. Additionally, the site is not listed on the Department of Defense Inventory of Fire/Crash Training Area Sites. The use and storage of PFCs would be of greater concern at the adjacent airport.</p>
<p>USEPA Region 2</p> <p>General Comment</p>	<p>Also, because the NFARC site is not included on the CERCLA National Priorities List, the State of New York in conjunction with NFARC is responsible for the various remedial activities. Therefore, please ensure that the New York State Department of Environmental Conservation also receives a copy of the FOST for their review.</p>	<p>Concur; NYSDEC received the draft FOST and has provided one review comment (above).</p>
<p>USEPA Region 2</p> <p>Enclosure 6</p>	<p>In addition, in Section II.A.c. and II.B.c. of Enclosure 6, “CERLCA Covenant” is mentioned. We suggest that, in those two instances, it be amended to “CERCLA Section 120(h)(3) Covenant”.</p>	<p>Concur. In those two instances the citation 42 U.S.C. § 9620(h)(3)(A)(ii) and (B) has been added.</p>

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USEPA Region 2 Enclosure 6	Lastly, in Section II.C. of Enclosure 6, we urge that “grantee is able to demonstrate that” be deleted from the third line of text so that it reads, “...unless such release or such newly discovered substance was due to Grantor’s activities...” CERCLA does not place the evidentiary burden of proof on either the grantor or the grantee in such a circumstance, and it is not appropriate for it to be determined in this FOST, unilaterally, to fall on the grantee.	The language presented is approved at the Office of the Secretary of Defense (OSD) and Department of Army (DA) level; subordinate commands do not have the authority to make changes to this standard FOST language.
Town of Niagara Section 2	Section 2 references military equipment parking but fails to reference airplane parking and/or maintenance activities on the aprons outside of the hangar building (Building 4). This is relevant since this would have been a logical location for aircraft fueling, deicing, engine run-ups and other maintenance related activities known to be potential sources of environmental constituents of concern. Results of investigations need to be reviewed to assess their adequacy and to determine whether additional investigations and/or remedial actions are required.	Section 2 has been edited to refer to the use of the property for aircraft maintenance and parking. Section 2 also provides a reference to “Sections 2 and 3 of the 2007 Environmental Condition of Property (ECP) Report” for “additional physical description and past use information.” Associated potential sources of environmental constituents of concern were assessed and documented in the 2007 ECP and subsequent environmental reports, which were provided for public review. No further investigative or remedial action is necessary.
Town of Niagara Section 2	Section 2 references Building 4 as a hanger but fails to include its known historical use for the repair and maintenance of NIKE missiles, which historically included the extensive use of chlorinated solvents and other constituents of concern. Results of investigations need to be reviewed to assess their adequacy and to determine whether additional investigations and/or remedial actions are required.	Section 2 has been edited to refer to the use of the property for service of NIKE missiles from missile batteries around the State of New York. Section 2 also provides a reference to “Sections 2 and 3 of the 2007 Environmental Condition of Property (ECP) Report” for “additional physical description and past use information.” Associated potential sources of environmental constituents of concern were assessed and documented in the 2007 ECP and subsequent environmental reports, which were provided for public review. No further investigative or remedial action is necessary.
Town of Niagara Section 3	Section 3 of the Draft FOST refers to final and updated ECP's published in 2007, 2012 and 2015. Only the 2007 and 2012 ECP's were included in the materials provided with the Draft FOST. It is the LRA's understanding that release of the 2015	Section 3 references the 2015 ECP Update Report as being “draft”, not final. Correct, this ECP Update Report cannot be finalized until the final asbestos abatement completion report for repair of interior

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	Updated ECP is on-hold pending findings in relation to the repair work performed on Building 4. The FOST cannot be considered Final until this critical information is obtained and reviewed by the LRA and any comments responded to by the Army. The LRA should be provided with an advance draft before distribution to state regulators.	rooms in Building 4 is available.
Town of Niagara Section 4	Section 4. The ECP of 2007 indicated that the property was classified as Type 7 (p. 8-3), and the ECP of 2012 classified it as Type 5 (p. 9). Section 4 of the Draft FOST classifies it (based on the 2015 ECP) as Type 4 (Enclosure 4, Table 1). Documentation regarding the assessment changes need to be reviewed prior to finalization of the FOST.	Although the draft 2015 ECP Update Report is not yet available for public review, all environmental reports finalized after the 2012 ECP report that support the Type 4 classification were provided for public review.
Town of Niagara Section 4 & Enclosure 3, Table 1	Section 4 refers to Enclosure 3 (Table 1 – Description of Property) where two tanks are described and it is indicated that closed status was granted in 2000 by NYSDEC under "guidance values". What are those values today and are the current values exceeded?	With regard to the 550-gallon UST, NYSDEC confirmed that the concentrations detected are below the currently applicable 6 NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives. Similarly, a comparison of closure sample data for the 1,000-gallon UST to current 6 NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives demonstrates the closure values are still below current cleanup objectives.
Town of Niagara Section 4.1	Section 4.1 refers to two (2) remediation sites, one for PCB's and the other for Outfall No. 5. The results of revised analysis that resulted in the change of status need to be reviewed to assess their adequacy and to determine whether additional investigations and/or remedial actions are required.	This assessment has been completed. NYSDEC provided a letter, dated 19 February 1992, to confirm that no further action was necessary for the PCB spill. In a letter, dated 27 March 2015, NYSDEC provided concurrence with the February 2015 No Further Action Record of Decision.
Town of Niagara Section 4.1	The Draft FOST does not include a third remediation site in Building 4 where asbestos and mold were (or are being) remediated, and a possible fourth site regarding petroleum releases cited in Section 4.3 as part of UST closure in 1999. Section 4.3 includes reference to waste oil tanks removed and detection of PAH's and TCE in soils, which are not petroleum releases and should be included in Section 4.2 Hazardous Substances. All building repair, asbestos and mold remediation reports for the work in	The intent of this paragraph is to summarize sites that have had known releases of hazardous substances to environmental media (e.g, soil, groundwater) that have required soil or groundwater remediation. The repair work inside of Building 4 has not impacted environmental media outside of the building. With regard to the USTs, post-closure tank removal sampling did not

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	Building 4 should be provided for review by the LRA prior to issuance of the Draft FOST.	require follow-on remedial activities.
Town of Niagara Section 4.1	Section 4.1- Environmental Remediation Sites, states that <i>"Due to the Property's location adjacent to airport taxiways and in or near a Runway Safety Area, the deed will include a restriction prohibiting use of the Property for residential purposes."</i> No regulatory citations or references are provided to indicate that 1) this is an environmental issue or concern, 2) there is a legal prohibition against residential use in areas near airports, and 3) specific types of residential uses may or may not be suitable for this location. The proposed restriction appears to be based on language in a letter from NYSDEC referenced in Enclosure 8 that indicates only that such use <i>"is not reasonably anticipated."</i> While the LRA acknowledges that certain residential uses such as single or multi-family housing are not anticipated to occur, and were not included in the Redevelopment Plan or EDC Application for the property, other types of uses that may be determined to be residential may be developed, such as transient overnight accommodations or temporary housing for emergency responders, both uses that have been contemplated for portions of the property.	Section 3.5 of the <i>Draft Sustainable Airport Master Plan</i> (Page 3-16) makes the following comment on non-compatible land uses: <i>"There are, however, several potential non-compatible land uses along Porter Road in the vicinity of the Runway 6 end. These land uses include several residential structures, as well as a mobile home park and several motels."</i> In addition, the February 2015 <i>Final No Further Action Record of Decision</i> for the property that was provided to the public for review includes the following statement: <i>"Prior to the correction of the HHRA, NYSDEC concurred in the selection of Alternative No. 2 as the Preferred Remedy provided that the United States places a restriction in the deed that prohibits residential use. While the Army does not believe that a deed restriction is necessary given the Site's unique location, it is consistent with Army policy when property is conveyed for commercial use under an Economic Development Conveyance."</i> It is Army policy that conveyance of Army properties under an EDC is generally restricted to like use; the property has not been used for residential purposes in the past and therefore would not be allowed after transfer. This policy is based on a number of factors, including job creation goals. As noted in the City's comment, the Record of Decision, and the Draft Sustainable Airport Master Plan, the location is not suitable for single and multi-family residential housing of the kind that might result in the lifetime exposure assumed in the human health risk assessment. The definition of residential that will be

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		used in the deed will be consistent with the risk assessment exposure assumptions. i.e., residential housing. Other transient uses such as hotels are not intended to be included in the restriction and this can be clarified in the deed if desired by the Town.
Town of Niagara Section 4.3	Section 4.3 discusses Petroleum and refers to Enclosure 5, where Table 3 addresses tanks, but does not provide information regarding investigations or remedial actions regarding most of them. In a typical Phase I Environmental Site Assessment process, such sparse information would lead to a recommendation for further investigation. The Draft FOST should include the closure documentation and the NFA letters from NYDEC as part of the ECP documentation for all listed occurrences, and results of investigations need to be reviewed to assess their adequacy and to determine whether additional investigations and/or remedial actions are required.	Subsection 4.3.1 of the draft FOST refers the reader to Subsection 3.5.2 for additional information associated with previous environmental reports, including the location of the referenced reports.
Town of Niagara Section 4.4	In Section 4.4 there is no mention of transformers and whether on-site transformers have been replaced with non-PCB containing fluids and marked appropriately. Annual PCB reports for the facility should be included in the supporting documentation.	Section 4.4 states “ <i>there is no evidence that PCB-containing equipment is currently on the Property.</i> ” As documented in Section 6.6 of the 2007 ECP Report, interviews with facility personnel confirmed that “ <i>none of the transformers contained PCBs.</i> ”
Town of Niagara Section 4.5	Section 4.5 references asbestos remediation, including on-going work. A copy of the final workplan and draft/final remediation documentation is required for review and comment by the LRA and its consultants prior to finalization of the FOST.	The remediation documentation is subject to Army and regulatory review only. The final remediation report, which will include the workplan, will be incorporated into the final 2017 ECP Update Report and made available to the LRA.
Town of Niagara Section 4.6	Section 4.6 discusses lead based paint. Have the surface soils adjacent to buildings with documented lead based paint been sampled for lead contamination, and if so, copies of all test results should be included or referenced. This section also limits use of the "Property", a term which is broader than the specific buildings referenced. The limitation and conditions should be confined to the buildings identified, not the entire 19.65 acre "Property." Section 3 of Enclosure 7 addresses all buildings on	Surface soils only exist adjacent to two buildings; all other buildings are surrounded by pavement. No soil sampling for lead has been conducted. The language presented is approved at the Office of the Secretary of Defense (OSD) and Department of Army (DA) level.

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	the Property, which is less restrictive, and it is suggested that the language of the Enclosure be used in section 4.6.	
Town of Niagara Section 4.8	Section 4.8 – Radiological Materials, indicates that an assessment was conducted " <i>in compliance with the accepted protocol.</i> " What specific protocol does this refer to?	Appendix D of the 2012 ECP Update Report, which is referenced in Section 4.8 of the draft FOST and was provided for public review, provides the <i>Final Radiological Assessment Report</i> . Section 4.1 of this document provides the assessment methodology, which is the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) NRC NUREG 1575 protocols.
Town of Niagara Section 4.9	Section 4.9 – Radon, should indicate that Niagara County is in EPA Radon Zone 2 - below 4 pico curies –from information provided on the internet, so action is not required. This should be noted in the Draft FOST, with appropriate references, in order to bring additional credence to the findings.	Reference to the EPA Radon Zone classification for Niagara County has been added to Section 4.9.
Town of Niagara Section 4.10	Section 4.10 – Munitions and Explosives of Concern (MEC), indicates that there is no evidence that MEC are present on the site now or were in the past. However, the statement in the Draft FOST is inconsistent with the statutory definition of "munitions constituents". 10 USC 2710(e)(3) defines "Munitions Constituents" as "any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions." The statutory definition includes "nonexplosive materials" whereas the draft FOST language reads that out of the definition. The qualification of concentration "to pose an explosive hazard" is not contained in the statute. The problem arises from the fact that there are no criteria for the concentration involved and it seems to ignore the statute.	Section 4.10 of the FOST evaluates the presence, potential presence, or absence of "explosives safety risks." As stated in Section 4.10, "The term 'MEC' means military munitions that may pose unique explosives safety risks." On the other hand, the carcinogenic and non-carcinogenic human health effects of munitions constituents, if present, are addressed in the traditional risk assessment. Non-explosive munitions constituents are not read out of the definition of "munitions constituents." 10 U.S.C. 2710(e)(3) is cited in the text without qualification or limitation. But, because non-explosive munitions constituents by definition do not pose an explosive safety risk, non-explosive munitions constituents cannot result in the presence or potential presence of MEC regardless of concentration. The definition of MEC in the FOST is the same as that in 32 CFR § 179.3.
Town of Niagara	Section 4.11 references groundwater conditions. With	The only chlorinated volatile compound

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Section 4.11	known releases of chlorinated compounds to groundwater as well as other petroleum issues and firefighting foam issues, has the indoor air been assessed for the intended use based on VOC detections, and has soil and groundwater been assessed for emerging contaminants – specifically Perfluooctane sulfonate (PFOS) and Perfluorooctanic acid (PFOA) compounds? The Department of Defense Inventory of Fire/Crash Training Area Sites (end of FY 2014 KBCRS data) does not include the Niagara Falls Army Reserve Center.	known to be released at the site is trichlorethene, which upon detection, was at concentrations that did not require further action. No evidence has been found to indicate that PFCs were used or stored at the site during past site operations. Concur; the site is not on the inventory of DoD Fire/Crash Training Area Sites.
Town of Niagara Section 5	Section 5 does not reference the large tanks located adjacent to the property and discussed in other environmental documentation. Has the previous use(s) been confirmed? A copy of the updated EDR report is needed for review in order to assess adjacent property conditions and whether additional investigation is necessary.	The 2007 and 2012 ECP reports provide all available information collected with regard to impacts from adjacent properties, including regulatory database search reports for adjacent properties. The 2012 ECP Update Report determined that the subject adjacent parcel to the west is not suspected of having had a negative environmental impact on the property and that no further action was recommended. A search of the current NYSDEC Spill Incidents Database also provided no evidence of any impacts to the Property from surrounding parcels.
Town of Niagara Section 6	Section 6 addresses Environmental Remediation Agreements through reference to Enclosure 6 – CERCLA Covenant, Access Provisions and Other Deed Restrictions. Enclosure 6, Section D – Environmental Protection Provisions then refers to Enclosure 7 – Environmental Protection Provisions. Section 1 of Enclosure 7 puts a blanket Residential Restriction on the entire property. Since environmental remediation was (or will be) performed on only selected areas of the property, why does the residential restriction apply to the entirety of the 19.85 acres? Furthermore, if the environmental remediation has been (or will be) completed, how is the Residential Restriction considered environmentally necessary? How does this restriction relate to the restriction stated in Section 4.1, which is based on the property's location relative to the adjacent airport? What risk analysis	As stated in Section 6, there are no environmental remediation orders or agreements applicable to the property being transferred. The deed provision that appears in Paragraph D of Enclosure 6 reserves Army's right to conduct future remediation activities if necessary. Inclusion of that deed provision is statutorily required by 42 U.S.C. 9620(h)(3)(A)(iii). Nothing more is intended by Section 6.

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	was done relative to residential uses of portions of or all of the property?	
Town of Niagara Enclosure 6	The proposed deed provisions contained in Enclosure 6 are much too broad and ambiguous. For example, the terms "any other condition" in the "As Is" and "Hold Harmless" provisions should be deleted. Similarly, the "Post-Transfer Discovery of Contamination" provision places the burden of proof on the LRA. Based on the (lack of) information referenced and/or cited in the Draft FOST, this is unacceptable to the Town of Niagara.	The language presented is approved at the Office of the Secretary of Defense (OSD) and Department of Army (DA) level; subordinate commands do not have the authority to make changes to this standard FOST language.
Town of Niagara Enclosure 7	Enclosure 7 notes in several places that the Grantee "acknowledges", "covenants" or "agrees" with the statements made. It should be made clear that this is suggested deed language and that the LRA has not at this time (draft FOST for comments) agreed to any of this language, which may or may not be included in the actual deed of transfer.	The language presented is approved at the Office of the Secretary of Defense (OSD) and Department of Army (DA) level; subordinate commands do not have the authority to make changes to this standard FOST language.