

DEPARTMENT OF THE ARMY
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT
600 ARMY PENTAGON
WASHINGTON DC 20310-0600

DAIM-BO

31 MAY 1996

SUBJECT: Guidance for Leasing of Base Realignment and Closure (BRAC)
Properties

1. References:

- a. Memorandum, SAILE-IL, 16 Jan 96, SAB (encl 1).
- b. Memorandum, SAIL-IH, 20 Oct 94, subject: Delegation Regarding Real Estate Outgrants at BRAC Installations.
- c. Memorandum, HQDA, DAIM-ED-R, 23 Aug 95, Subject: Implementing Guidance for Signature Authority and Staffing Procedures for Finding of Suitability to Transfer/Lease (FOST/FOSL).

2. This memorandum provides guidance to improve processing of reports of availability (ROA) for leasing BRAC properties IAW instructions from the Deputy Assistant Secretary of the Army (Installations and Housing) (encl 1). This guidance is designed to ensure all environmental and leasing requirements are met and appropriate conditions and restrictions are reflected in the ROA and lease document. The delegations of authority previously issued by HQDA (references b and c) remain in force.

3. All parties will follow the processing procedures provided (encl 2). We are including a summary of lessons learned that may assist you (encl 3). To avoid potential legal problems and to expedite HQDA review and approval, careful coordination of the ROA package with MACOM BRAC, environmental, legal, and real estate offices is essential before submission to HQDA. After approval of the ROA package by the Office of the Assistant Secretary of the Army (Installation, Logistics and Environment), the U.S. Army Corps of Engineers will negotiate and execute the lease.

- a. ROA Format. MACOMs should follow the instructions and use the format provided (encl 4) when preparing ROAs. Format will also be provided via electronic-mail.

- b. FOSLs. To avoid duplication of effort, we are adjusting the steps in how HQDA currently reviews FOSLs (reference c) by coordinating review and approval of the ROA together with its related FOSL. A sample FOSL is provided for your use (encl 5).

4. We will re-evaluate this guidance in one year to determine if these procedures continue to be necessary. We will revise the guidance accordingly if our experience demonstrates there has been significant improvement in the

ROA packages and all environmental and leasing requirements are being adequately addressed.

5. Please distribute copies of these instructions to all subordinate commands, installation, and districts. Additional information can be provided by the following individuals: overall general process, Ms. Barbara Anderson (703-693-3501); real estate issues, Mr. Gary Paterson (202-761-0520); and environmental issues, Ms. Robin Mills (703-693-0679).

5 Encls
as

/signed/
FRANK L. MILLER, JR.
Major General, GS
Assistant Chief of Staff
for Installation Management

(Enclosure 1)
DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

January 16, 1996

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Leasing of BRAC Properties

To ensure compliance with the complex and newly promulgated regulations, DOD guidance, and recently enacted law respecting leasing (both "interim" and "in-furtherance-of-conveyance") of properties at BRAC installations pursuant to 10 U.S.C., 2267, the following procedures will be implemented immediately.

After identification of an intended lessee and lease purpose, a complete Report of Availability (EOA) will be forwarded to this office for review and approval prior to the negotiation and execution of a lease for property at a BRAC installation. The ROA must contain applicable supporting environment documentation required by the National Environmental Policy Act of 1969 (NEPA); the Endangered Species Act of 1973(ESA); the Clean Air Act (CAA); the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Community Environmental Response Facilitation Act (CERFA); the National Historic Preservation Act (NHPA); and any other applicable environmental laws, regulations, policy, or guidance.

In cases where a Finding of Suitability to Lease (FOSL) has been prepared in final form and has been fully staffed, and requires only the approval and signature by the Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health) (DASA) (ESOH), the ROA may be forwarded to this office with the unsigned FOSL. Upon receipt, this office will coordinate with the DASA(ESOH) to obtain final approval of and signature on the FOSL.

Upon approval of the ROA packet by this office, leases may be negotiated and executed pursuant to the approved ROA and any instructions from this office under the delegation of authority issued by this office (Memorandum, dated October 20, 1994, subject: Delegation Regarding Real Estate Outgrants at BRAC Installations). This memorandum supersedes in part and amends the October 20, 1994 delegation by requiring ROA approval prior to negotiation and execution of leases for BRAC properties.

The Office of the Assistant Chief of Staff for Installation Management, working in conjunction with the Real Estate Directorate of the U.S. Army Corps of Engineers, will issue guidance implementing this memorandum. The guidance should ensure that ROAs for leases are accurately prepared, adequately documented and legally supportable upon presentation to this office. The implementing guidance will require that lease documents be

prepared using form language approved by the Real Estate Directorate. Any deviation from the approved form language should be specifically approved by the Real Estate Directorate. Additionally, the guidance will require that, after execution, signed lease documents be forwarded immediately to this office for an after-action-review. The purpose of this review will be to ensure compliance with the terms of the ROA and instructions from this office.

This policy is effective immediately.

/s/

Paul W. Johnson
Deputy Assistant Secretary of the Army
(Installations & Housing)
OASA(I,L&E)

(Enclosure 2)

GUIDANCE FOR PROCESSING REPORT OF AVAILABILITY (ROA) PACKAGES
FOR LEASING OF BRAC PROPERTY

5/29/96

Note this process attempts to be non-specific about who in the MACOM is responsible for the ROA package since MACOMs operate differently. Additionally, this process does not address how the installation staff fits into the process since that is a MACOM prerogative.

1. MACOM. MACOM is responsible for preparation of ROA and Finding of Suitability to Lease (FOSL) and coordinates the ROA package with MACOM BRAC, environmental, legal, and real estate offices before providing the ROA package to HQDA. MACOM Commander of designated signatory approves Sections B & C of the ROA, verifying the completeness and accuracy of the information contained therein. MACOM provides 6 complete copies of the final ROA package to HQDA BRAC Office (BRACO) with the ROA and FOSL on disk to facilitate any minor changes that may be deemed necessary by HQDA. MACOM also provides a copy to the supporting U.S. Army Engineer District for advance notice of the proposal to lease the property.

2. HQDA REVIEW. HQDA BRACO provides copies to the following offices with a request to meet and review within 5-9 working days:

- 1 - OGC (Office of General Counsel)
- 1 - ODEP (Environmental Program Directorate, Assistant Chief of Staff for Installation Management)
- 1 - DAJA-EL (Office of the Judge Advocate General, Environmental Law)
- 1 - DAJA-AL (Office of the Judge Advocate General, Administrative Law)
- 1 - USACE Real Estate (for Chief Counsel Concurrent Review)

HQDA BRACO will notify SAILE-ESOH and SAILE-IH of the reviews by furnishing a cope of the coordination page without attachments.

a. ODEP and OTJAG will review all environmental information in the ROA(including the FOSL, National Environmental Policy Act documentation, and Section 106 documentation) to ensure that it is complete and accurate.

b. OGC will review the entire package with the understanding that the environmental documents are under review by the ODEP and OTJAG.

c. At the end of the HQDA review, HQDA BRACO PM will schedule a meeting to discuss and resolve issues. The MACOM should be included via phone. Representatives from USACE Real Estate, SAILE-ESOH, and SAILE-IH will attend if necessary. ODEP, OTJAG, and OGC should discuss and seek to resolve any major concerns prior to this meeting.

d. Depending on the nature of the changes required, either the HQDA BRACO PM or the MACOM will amend the ROA package so that a complete, revised ROA package that has incorporated all reviewers comments can be provided to

OGC before approval by OASA(I,L&E).

3. HQDA APPROVAL

a. HQDA, BRACO provides (via cover memorandum) the complete, revised ROA package through OGC to OASA(I,L&E) for approval. The ROA package goes from OGC to SAILE-ESOH or SAILE-IH dependent on whether the FOSL has already been signed or not.

b. SAILE-ESOH signs the FOSL and forwards the ROA package to SAILE-IH. If the FOSL is already signed and no changes are required, the ROA package goes straight from OGC to SAILE-IH for a determination of availability.

c. SAILE-IH signs the determination of availability (Section A of the ROA) and forwards the ROA package to HQDA BRACO with any additional instructions for negotiating and executing the lease.

d. HQDA, BRACO provides the signed ROA package to USACE Real Estate along with any additional instructions for negotiating and executing the lease and a copy to the MACOM.

4. USACE EXECUTION.

a. USACE Real Estate forwards the ROA package to appropriate USACE District Real Estate Office.

b. The USACE District works with the MACOM and the lessee to negotiate the lease using the approved ROA package. Changes to the ROA package will be staffed using the steps above. Leases will be prepared using forms that have been pre-approved by USACE Real Estate. Any deviation from the forms must be specifically approved by USACE Real Estate.

c. The USACE District provides a copy of the executed lease to the MACOM, HQDA BRACO PM, USACE Real Estate, OGC, and SAILE-IH. The USACE District is the holder of the official ROA packages (original signatures).

5. ADDITIONAL INFORMATION. Additional information can be provided by the following individuals; overall general process, Ms. Barbara Anderson (703-693-3501); real estate issues, Mr. Gary Paterson (202-761-0520); and environmental issues, Ms. Robin Mills (703-693-0679).

(Enclosure 3)

INFORMATION PAPER

SUBJECT: Report of Availability (ROA) Packages for Leasing Base Realignment and Closure (BRAC) Property

PURPOSE: Lessons Learned from Recent ROA Package Reviews.

1. Distinguishing Between Interim and In-Furtherance-of-Conveyance ("OFFICE") Leases. ROA packages must clearly indicate whether the lease proposed is an "interim" lease or an "OFFICE" lease. The distinction is important for several reasons:

a. Interim leases are before the completion of the "fence-to-fence" disposal NEPA document. Accordingly, they can only allow limited use to be made of property and facilities such that not reasonable reuse options will be foreclosed prior to the publication of NEPA analysis conclusions. In other words, interim leases should not contain first-rights-to-buy, purchase options, etc., that would speak to an ultimate and irreversible disposal decision. Moreover, interim leases typically should be of a short duration, pending completion of the fence-to-fence disposal NEPA documentation and other final disposal decision.

b. Conversely, IFOC leases are after the fence-to-fence disposal NEPA document has been completed, and thus they can allow uses of the property, consistent with NEPA findings and recommended mitigations, that may foreclose certain disposal options for the property. Moreover, there is no particular limit to the duration of these leases in light of section 2834 of the National Defense Authorization Act for FY 1996.

2. Justifying Interim Leases to non-governmental, non-LRA parties. ROA packages must contain a justification for interim leasing to non-governmental or non-LRA entities due to the requirements of the DO Reuse Manual, which allow such leases only in "exceptional circumstances." See DOD 4165.66-M, Section 5.2.2 (bullet #2).

3. ROA Packages Should Expressly Address all Relevant Environmental Laws. HQDA Review of ROA packages will proceed far more expeditiously if compliance with relevant environmental and other laws is expressly addressed (even if compliance with a particular law is not a problem). Thus, the ROA must address, at a minimum, compliance with The National Environmental Policy Act of 1969 (NEPA); The National Historic Preservation Act (NHPA), especially Section 106 Consultation; The Endangered Species Act (ESA), especially any section 7 consultation; the Clean Air Act (CAA), even is in an attainment area; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by CERFA; hazardous waste storage and disposal requirements, including restrictions imposed by 10 U.S.C., Section 2692 and how potential lessee activities may or may not implicate this provision; and any other relevant Federal, state, or local provisions.

4. Lessee Changes in Use to the Property. Must be cleared in advance, in

writing, by the installation commander. If the change in use is significant, Lessee will be required to fund and perform any additional environmental analysis that may be required -- REMEMBER, significant changes that foreclose disposal options can only be approved after the NEPA document for disposal of the ENTIRE installation has been published.

5. The EBS & Lessee Knowledge Thereof. The ROA must clearly indicate that the Lessee will be required to read the EBS, concur in its finding, and agree to its incorporation into the lease for the purposes of determining who may be responsible for subsequently discovered environmental contamination.

6. CERCLA 120(h)(1) Notice. The ROA package must contain the required CERCLA 120(h)(1) notice in tabular form, and should provide for attachment of the same to the lease as a separate exhibit.

7. Clean Air Act (CAA) Requirements. For all ROAs that concern leases in a CAA non-attainment and maintenance area, the ROA must include a Conformity Determination or a Record of Non-applicability (See Army Guidance on General Conformity Under the Clean Air Act, DAIM-ED-C, 27 Jun 95).

8. Deviation from Normal Practices. All non-standard conditions and terms of the lease should be identified expressly in the ROA and justified. All unusual transactions, aspects and other anomalies respecting the lease should be expressly discussed and explained.

9. MACOM Certification. All ROA packages must contain certification from the MACOM indicating that MACOM legal and technical reviews have been completed prior to forwarding, and that there are no unresolved issues respecting the leasing action that require resolution prior to approval of the ROA.

10. NEPA Concerns. For leasing action that qualify for a Categorical Exclusion (CX) and Record of Environmental Consideration (REC) under AR 200-2, MACOM's and Installations should take care to ensure that such analysis will in fact support the proposed action. Use of CX A-21 generally will be inappropriate where the concerned installation environmental assessment is more than ten years old (i.e., completed prior to 1986), and it has not been updated since its original date. The appropriateness of reliance upon environmental assessments that are less than ten years old will be determined on a case-by-case basis, considering any changes in the environment affected and applicable environmental laws, regulations, and policies that have become effective subsequent to completion of the assessment in question.

Moreover, the practice of relying on lessee compliance with applicable Federal, state, and local environmental laws, regulations, and policies may not be advanced as the basis for a conclusion that the leasing action will not result in any individual or cumulative effects on the environment -- if such a basis could justifiably be claimed, then no action would ever be deemed to have individual or cumulative effects on the environment such that a RE would be insufficient to support the action.

Lastly, Recs. prepared pursuant to CX a-21 and A-24 should describe, with some particularity, how the determination was arrived at that the

contemplated lessee activity is either "consistent with" the land-use plan analyzed in the existing installation environmental assessment, or respectively, how the determination was arrived at that the contemplated lessee activity does not betoken "significant changes in land use." Thus, at a minimum such descriptions should explain the proposed lessee's intended activities (if known), the former activities at the installation that were similar to the lessee's proposed activities, the former Army activities undertaken in the specific facilities being made available to the lessee, and other factual information describing the basis for the conclusion that the activities are consistent with an existing installation environmental assessment, or do not constitute a significant change in the land use of the property and facilities proposed for leasing.

Mr. Peel/3-3024

(Enclosure 4)

HEADQUARTERS, DEPARTMENT OF THE ARMY
INSTRUCTIONS FOR PREPARING A REPORT OF AVAILABILITY (ROA)
5/29/96

These instructions are to be used to carry out the policy issued by the Deputy Assistant Secretary of the Army for Installations and Housing (DASA (I&H)) memorandum, 16 Jan 96, subject : Leasing of BRAC Properties. Except for Section A, the ROA is a checklist. Sections B and C are designed to incorporate all data necessary to complete a lease on the subject property and show the issues which were considered throughout the chain of command. The ROA format is set up so that different sections can be prepared and staffed separately and signed by different Army elements, if required.

Section A is the Determination of Availability and is signed after Sections B and C have been completed, reviewed, and approved. Until further notice, the Determination of Availability will be executed by the DASA (I & H).

Section B is the general and operational information for making property available.

Section C contains environmental considerations.

The MACOM is responsible for the completion, accuracy, and approval of Sections B and C prior to forwarding to HQDA for final review and approval. MACOM signatory for Sections B and C is to be the MACOM Commander or someone authorized to sign for the MACOM Commander.

The ROA package is to be forwarded to HQDA via a cover memo which states that staffing within required MACOM offices (BRAC, environmental, legal and real estate) has been completed and is to include attachments necessary to support the ROA, including but not limited to maps and the Finding of Suitability to Lease (FOSL)*. National Environmental Policy Act (NEPA) documentation** and Environmental Baseline Surveys are not required to be attached to the ROA as long as they have been previously provided to HQDA in sufficient copies. When responding to an item for which the answer is contained in a document previously submitted to HQDA (in sufficient copies), clearly identify where the answer is located (i.e. , document title, date, page, paragraph, etc.).

Additional information can be provided by Mr. Gary Paterson (202-761-0520) for real estate issues and Ms. Robin Mills (703-693-0679) for environmental issues. However, consult with MACOM real estate and environmental offices prior to telephoning HQDA offices.

*The FOSL differs from the ROA in that while the ROA is a checklist used to negotiate the lease, the FOSL is the Army's declaration that the property is suitable to inhabit for a specific purpose. The FOSL is a document agreed upon by the Department of Defense and the U.S. Environmental Protection Agency.

** If Categorical Exclusion A-21 is used and the Record of Consideration is based on the active installation's master plan NEPA analysis, then appropriate extracts from the same are to be attached to the ROA.

SECTION A
DETERMINATION OF AVAILABILITY

Based upon the attached Report of Availability (ROA), which the MACOM has reviewed for accuracy and completeness and approved, I find that the proposed leasing action described in the ROA is in the public interest and is consistent with applicable laws and regulations.

I determine that the property is available for the proposed use and hereby authorize negotiation and execution of a lease in accordance with the attached ROA and applicable laws, regulations, and policy guidance.

****INSERT ANY ADDITIONAL INSTRUCTIONS PERTAINING TO THE NEGOTIATION AND EXECUTION OF THE LEASE.

Date

Paul W. Johnson
Deputy Assistant Secretary of the Army
(Installations and Housing)
OASA (I, L&E)

SECTION B - REPORT OF AVAILABILITY

GENERAL AND OPERATIONAL INFORMATION

(Installation:)

Terms used herein may be found in AR 405-1-12, The Real Estate Handbook, Chapter 8 (Management), dated Jan 95.

I. LEASE ADMINISTRATION:

1. Name, address and telephone number of Applicant or requester's representative(s), if any:

2. Proposed use:
3. Start date, if applicable:
4. Recommended term of outgrant:
 _____years; or
 _____months.

II. PROPERTY INFORMATION:

1. General property identification. Refer to the map(s) attached to the Finding of Suitability to Lease (FOSL) showing the nearest project or installation boundary; acreage; character of land; and the number and type of improvements, if both land and improvements are included. If only building space is involved, give total square feet and describe the type of construction. Use existing maps. Identify the location of the property to be leased on the attached maps (map coordinates, etc.):

Tract No.(s) and name, if any: _____
 Segment maps, Master Plan designations: _____
 Other (describe): _____

2. Acreage:

3. General character of the property (short description of the uses of the property; i.e., industrial, residential, warehouse, etc.): _____

4. Are Government buildings and improvements included in the area?
 No
 Yes. If yes, identify and describe all buildings, facilities and improvements, e.g. Identification Nos., square footage outgranted/percentage of building, and condition:

5. Existing or preceding property use (Provide a description below for each building, facility, area, etc., in either list or table format):

6. United States property interest:
 fee simple title
 easement
 in-lease
 other.

7. Is the property subject to a reversionary interest?
 No.
 Yes. If yes, describe:

8. Army interest:

- direct control
- permit from a Federal Agency
- withdrawn from the public domain.

9. Type of jurisdiction:

- Exclusive Federal Jurisdiction
- Concurrent Federal Jurisdiction
- Proprietary status

10. If other than proprietary, is jurisdiction to be retroceded?

- Yes
- No, Explain. If a retrocession action is pending, identify the status of that effort:

—

III. OPERATIONAL FACTORS:

1. Are utilities, e.g. electricity, natural gas/propane/heating oil, potable water, wastewater treatment, telephone, cable TV, etc., available from public utility companies?

- No.
- Yes. If yes, identify they type, quantity, and provider of such services:

—

2. Will the Army be providing utilities or services on a reimbursable basis?

- No.
- Yes. If yes, identify the instrument used to establish the terms under which such services will be provided and the type, quantity, and consideration:

—

3. Will the proposed use require destruction, relocation, modification, or replacement of Government facilities?

- No.
- Yes; please explain:

—

4. Will the grant of the proposed use affect the operation of the installation or the BRAC Implementation Plan?

- No.
- Yes, please explain:

—

5. The following site-specific recommendations are made as to limitations, restrictions, or conditions to be included in the grant to make the proposed use compatible with the operation of the installation, e.g. security, access, parking:

—

6. Non-Environmental Safety Issues and Concerns, if any:

—

7. Airfields and Airspace.

a. Will the planned use of the property affect the airspace over or near the property or military installation?

No.

Yes. If yes, the proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant:

—

b. Will the lease of the property require the notification of the FAA?

No.

Yes. If yes, explain who will notify FAA and when:

—

c. Will structures be built on the property which will require an airspace study?

No.

Yes. If yes, explain who will do the study and any other requirements. _____

—

8. REMARK- include any legal, policy, or mission factors you are aware of

which may affect the proposed use of the property:

—

—

—

IV. PRELIMINARY PROCEDURES:

1. Inventory and Condition Reports (This is a personal and real property report (videotaped) by the District when we actually have a lessee):

No Government improvements are included in the proposed outgrant, so an inventory and condition report is not required.

Government improvements are included and an inventory and condition report is required to be completed before lease.

2. Consideration:

Monetary consideration is not recommended for this action. Provide full justification.

USACE District is requested to determine full consideration.

USACE District is requested to determine fair market value for the leased interest and for offsets (in kind amounts) for the improvement, maintenance, protection, repair or restoration of the property leased. ATTACH fair market value report/appraisal and report of offsets.

3. Waiver of Competition:

A waiver of competition is not recommended.

A waiver of competition is recommended. Provide full justification and proposed lessee, if waiver is recommended.

4. Other applicable laws, regulations, MOA's, etc. requiring consideration for processing this action:

5. Additional information which will assist in processing this application/action: _____

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SECTION C -REPORT OF AVAILABILITY

ENVIRONMENTAL CONSIDERATIONS

1. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS: The requirements under NEPA for the proposed leasing action have been met as follows:

[] This actions falls under one of the Categorical Exclusions (CX) contained in AR 200-2 (Environmental Effects of Army Actions). The environmental effect of the action has been considered. A Record of Environmental Consideration (REC) is attached, indicating the CX pursuant to which proposed lease is authorized. The NEPA analysis on which the REC is based is:

[] on file HQDA (Identify title and date: _____)

[] attached (attached pertinent extracts from the applicable NEPA analysis if the REC is based on the NEPA analysis which has not been previously staffed at HQDA).

[]* The impact of this action is considered to be minimal or insignificant. The Environmental Assessment (EA) with Finding of No Significant Impact (FNSI) is :

[] on file at HQDA (identify title and date: _____)

[] attached (if not previously staffed at HQDA).

[] * The impact of this action is considered to be significant. An Environmental Impact Statement (EIS), or supplement thereto, along with the Record of Decision (ROD) is :

[] on file at HQDA (Identify title and date:_____)

[] attached (if not previously staffed at HQDA).

* For EA and EIS, identify mitigation actions which are required, costs, and responsible party for the mitigation:

—

—

If the EIS or EA covers more than the proposed leasing action, explain how and where the leasing action is analyzed and considered in the NEPA documentation:

—

—

2. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) AND THE ENVIRONMENTAL BASELINE SURVEY (EBS):

[] An EBS has been conducted and no hazardous, toxic, radiological waste(HTRW) substances were identified as released, stored, or disposed on the property in the threshold quantities. Provide date of EBS on file at HQDA:

An EBS has been conducted which indicates HTRW substances were released, stored, or disposed on the property in the threshold quantities. Hazardous storage, disposal, or release notification must be included in the outgrant document (reference 40 CFR Part 373) and attached to the FOSL. A copy of the EBS containing the details is on file at HQDA. Choose one:

Remedial actions have been completed so that the property is considered safe for the proposed use.

Remedial actions have not been completed. Estimate the time to complete such action: _____. Appropriate land use restrictions and access clauses must be provided in the protection provisions in the FOSL and put into the lease. The provisions can be found on page _____ of the attached FOSL.

3. REAL PROPERTY CONTAMINATED WITH AMMUNITION, EXPLOSIVES, OR CHEMICAL WEAPONS.

a. Does the property contain ammunition, explosives or chemical weapons?

No.

Yes. If yes, has a Plan to clean up the property been submitted through the Major Army Command and the U.S. Army Technical Center for Explosives Safety to the Department of Defense Explosives Safety Board (DDESB) for approval before cleanup and lease?

No.

Yes. If yes, have the ammunition, explosives, or chemical weapons been removed (to a degree compatible with the use of the property) prior to lease?

Yes.

No. Provide date when property will be cleared: _____

b. Will access rights to implement any monitoring plan or use restrictions be required?

No.

Yes. Describe (Set out proposed language to be inserted in lease):

—

4. WASTE DISPOSAL (The Solid Waste Recovery Act, as amended; Resource Conservation and Recovery Act (RCRA)).

a. Choose one:

The applicant will not generate hazardous waste or will not treat, dispose, or store waste defined by EPA as having the following characteristics - corrosively, ignitability, reactivity, or toxicity.

The applicant will generate hazardous waste or will not treat, dispose, or store waste defined by EPA as having the following

characteristics - corrosivity, ignitability, reactivity, or toxicity.
Identify all waste streams and quantities:

Choose the appropriate:

The applicant has obtained a hazardous waste generator identification number from EPA, ID no. _____

The applicant has established records, waste management requirements, and a Spill Prevention Plan.

b. Choose one re 100 USC 2692.

The applicant will not store or dispose of non-DOD toxic or hazardous substances pursuant to 10 USC 2692.

Storage or disposal of non-DO toxic or hazardous substances has been authorized pursuant to 10 USC 2692 (Attach copy of authorization).

5. UNDERGROUND/ ABOVE GROUND STORAGE TANKS.

There are no underground storage tanks (USTs) on the property and the applicant will not be installing such tanks.

There are no above ground storage tanks for fuel or other regulated substances and the applicant will not be installing such tanks.

There are underground storage tanks (USTs) on the property and/or the applicant will be installing such tanks:

a. Existing underground storage tanks are in compliance with current laws and regulations:

Yes.

No, Explain: _____

b. Construction of proposed underground storage tanks has been certified for such compliance:

Yes.

No, Explain: _____

There are above ground storage tanks for fuel or other regulated substances on the property and/or the applicant will be installing such tanks:

a. Existing above ground storage tanks are in compliance with current laws and regulations:

Yes

No, Explain: _____

b. Construction of proposed above ground storage tanks have

been certified for such compliance:

Yes.

No, Explain: _____

6. CLEAN WATER ACT (FEDERAL WATER POLLUTION CONTROL ACT):

This action will not involve the discharge of any pollutants into the waters of the United States or less than one million gallons of discharge per day will be made.

This action will entail the discharge of more than one million gallons of pollutants into the waters of the United States per day.

The applicant has applied for and received a National Pollution Discharge Elimination System (NPDES) Permit from the EPA/ appropriate state agency. If not received, state circumstances:

The Grantee is complying with the requirements of a NPDES Permit and the Grantee has a monitoring and reporting procedures.

Subsequent requests for expansions or additional construction should be reviewed to assure the Grantee is in compliance with five-acre rule.

7. CLEAN AIR ACT- FEDERAL CONFORMITY REQUIREMENTS:

This action does not require a written conformity determination in accordance with EPA's rule because:

The installation is in an attainment area.

The installation is in a non-attainment or maintenance area and the action falls within an exemption in the rule. Attach a Record of Non-applicability (RONA) in accordance with Army Guidance. List pollutants:

This action is not exempt from the conformity regulation. Attach conformity determination. Describe the mitigation requirements or other restrictions, if any, which must be incorporated in the lease:

8. ENDANGERED SPECIES:

Coordination with the USFWS to determine the possible presence of any federally listed endangered, threatened, or candidate species in the

action area has occurred (attach correspondence). Provide date of last coordination and describe results of coordination:

—

This leasing action will affect:

a federally listed endangered or threatened species; list:

a federal candidate species; list: _____

a state listed species; list: _____

designated critical habitat; describe: _____

none of the preceding.

This leasing action may affect a federally listed endangered, threatened, or candidate species and required consultation with the USFWS has been completed. Attach any biological assessment, opinion, and correspondence with the USFWS. Accordingly, the following restrictions must be incorporated in the lease to protect the affected species and its habitat:

9. FISH AND WILDLIFE COORDINATION ACT (FWCA):

This action will not jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA.

This action will jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA. Impact description: _____
Recommended action prior to availability: _____

10. COASTAL ZONE MANAGEMENT (CZM) (if applicable):

CZM is not applicable.

CZM is applicable, and a CZM Act determination with the approved state CZM Plan has/will be obtained.

11. FLOOD PLAIN:

This property is not located within the 100-year flood plain and does not fall under the purview of Executive Order 11988.

This property is located within the 100-year flood plain and does fall under the purview of Executive Order 11988 and (check the appropriate):

The proposed use of the property will not adversely impact the flood plain.

There is no other practicable alternative available for this intended use.

The proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant document:

—

12. WETLANDS:

Does the property to be leased contain wetlands regulated under Section 404 of the Clean Water Act (CWA)?

No.

Yes.

Does planned use of the property require a Section 404 permit?

No.

Yes. State status of Section 404 permit process:

—

—

13. HISTORICAL, CULTURAL, AND ARCHEOLOGICAL RESOURCES:

The real property has been surveyed for historical and cultural resources and there have been NONE identified on this property, and this action is in compliance with the National Historic Preservation Action and other relevant laws; Executive Order 11593, Protection and Enhancement of the Cultural Environment; or any MOA's related thereto. Attach correspondence from State Historic Preservation Office agreeing that no historical and cultural resources have been identified on this property.

A survey has identified historical and/or cultural resources on this property. This action has been coordinated with the State Historic Preservation Officer and the Advisory Council on Historic Preservation in accordance with 36 CFR 800 (attach any Programmatic Agreement, MOA, and relevant correspondence). The following restrictions must be incorporated into the outgrant document to protect the property:

—

Native American graves have been identified on this property (Refer to requirements of the American Indian Religious Freedom Act and Native American's Graves Protection and Repatriation Act). Consultation on the disposition of Native American graves and objects has been initiated with interested Native American organizations; correspondence attached.

Archaeological sites or resources have been identified on this property. Refer to the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act. The plan for curation and disposition of these resources is attached.

14. LEAD-BASED PAINT:

a. Are there improvements constructed prior to 1960 which are considered to contain lead-based paint or which have been determined to contain lead-based paint?

No.

Yes. Provide appropriate restrictions and notifications in the FOSL and lease.

b. Are these improvements constructed between 1960 and 1978 which are considered to contain lead-based paint or which have been determined to contain lead-based paint?

No.

Yes. Provide appropriate restrictions and notifications in the FOSL and lease.

15. OTHER ENVIRONMENTAL CONSIDERATIONS:

a. Is there any Asbestos Containing Material on the property?

No.

Yes. Provide appropriate restrictions and notifications in the FOSL and lease.

b. Will the proposed outgrant activity impact an area designated under the Wild and Scenic Rivers Act?

No.

Yes. If yes, what conditions may need to be included in the lease?_____

c. Will the proposed outgrant activity involve the use of insecticide, fungicide, and rodenticide so that compliance with the Federal Insecticide, Fungicide, and Rodenticide Act is necessary, e.g. Agricultural, golf courses, restaurants?

No.

Yes. If yes, list:_____

d. Are there polychlorinated biphenyls (PCBs) present?

No.

Yes.

e. Has a radon survey been completed for the buildings to be leased?

No.

Yes.

Choose one:

no buildings have radon in excess of applicable standards.

the following buildings exceed standards: List with

appropriate use restrictions: _____

f. Are there any other special-purpose environmental laws applicable to the proposed activity?

No.

Yes, Explain: _____

g. Is further environmental study required?

No.

Yes, Explain: _____

16. ADDITIONAL COMMENTS: _____

—

—

MACOM Certification

The information furnished in Sections B and C has been fully coordinated among the MACOM Staff (BRAC, environmental, legal, and real estate) and is accurate and complete. Recommend that the DASA (I&H) make a Determination of Availability by signing Section A of the ROA.

Date

MACOM Certification Authority

Encl 1. (if applicable) Fair market value report/appraisal and report of offsets.

Encl 2. Finding of Suitability to Lease (FOSL) with site map attached.

Encl 3. Additional environmental reports and data (REC and extracts from applicable NEPA analysis if not already provided to HQDA; site-specific EBS, if not previously provided to HQDA; RONA) and any other documentation of compliance with environmental and cultural considerations. List attachments:

(Enclosure 5)

FINDING OF SUITABILITY TO LEASE
STATE PARK PARCEL
FORT BENJAMIN HARRISON, INDIANA

March 1996

1. INTRODUCTION

The purpose of this Finding of Suitability to Lease (FOSL) is to document environmentally-related findings for the proposed lease -- not to exceed five years -- of the state park parcel consisting of approximately 50 buildings and 1275 acres of land at Fort Benjamin Harrison, Indiana (FBH). The parcel is proposed to be leased to the State of Indiana for the purpose of operating a State Park. State Park operations will include natural resource management and administration of passive (low impact) public recreation. Passive recreation includes hiking, walking, bicycling, picnicking, horseback riding, and other non-motorized activities. Individual facilities will be employed at pre-closure like-use consistent with the Reuse Levels assessed in the January 1995 Final Environmental Impact Statement on the Disposal and Reuse of Fort Benjamin Harrison, Indiana (FEIS).

In my capacity as the Acting Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health, and based on an Environmental Baseline Survey, I have determined that the proposed lease parcel is suitable for lease to the State of Indiana for operation as a state park.

2. PROPERTY DESCRIPTION

A site map is attached of the proposed lease parcel. (See Attachment 1.)

3. REGULATORY COORDINATION

The Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA) Region V were notified of the initiation of the FOSL. Regulatory comments received during the FOSL development were reviewed and incorporated into the document, with the exception of a reservation requested for inclusion by the EPA. This statement is attached to the FOSL.

4. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The property lease proposed by this FOSL is consistent with the Fort Harrison Reuse Plan. The environmental effects of the reuse activities anticipated under the proposed lease were assessed specifically under the "Low-Intensity Reuse" Category in the FEIS on the Disposal and Reuse of Fort Benjamin Harrison, Indiana (January 1995). The proposed lease is consistent with the conditions in the FEIS and the Record of Decision which resulted from the EIS. The proposed lease -- to include the Environmental Protection Provisions at Attachment 2 -- will not be adverse to human health and the environment.

5. ENVIRONMENTAL BASELINE SURVEY FINDINGS

The Army has determined the environmental condition of the proposed lease parcel by conducting an environmental baseline survey specific to nine subparcels comprising the parcel originally proposed for lease. (See Attachment 1). The EBA determined that two of the nine subparcels require resolution of unexploded ordnance (UXO) concerns. All of subparcel 9 and the eastern half of subparcel 2 (subparcel 2b) must be withheld from the proposed lease. All existing environmental information was used in conducting the EBS.

5.1 Hazardous substances

Based on the review of the site-specific EBS:

5.1.1 Subparcels 1, 2a and 7: There is no evidence that hazardous substances or petroleum products were stored, released, or disposed in these parcels, including no migration of these substances from adjacent areas.

5.1.2 Subparcel 4: Area where storage only of petroleum products occurred for a year or more, but no release of disposal has occurred.

5.1.3 Subparcels 3, 5, 6 and 8: There is evidence that hazardous substances or petroleum products were stored, released, or disposed in these subparcels, and migration of these substances is possible from adjacent areas currently under investigation. The terms of the lease will restrict access by the lessee and prohibit access by the public to the areas under investigation.

The terms of the lease will restrict access by the lessee and prohibit access by the public to the areas under investigation. Physical barriers will be installed at the former small arms firing ranges in subparcel 6, where surface lead contamination could pose a risk to small children.

Subparcel 3: Former Sewage Treatment Plant/Fire Training area under investigation as RFI SMMU#11. Metals and organics of concern in subsurface soil; in groundwater, metals; in sediment, arsenic.

Approximately 100 gallons of diesel fuel and gasoline were stored in containers at Building 810 for the past fifteen years. No release has been reported.

Subparcel 4: Approximately five gallons each of liquid petroleum gas and fluid petroleum products were stored at Building 806 for the past ten years. No release has been reported.

Subparcel 5: former auto Craft Shop (Building 705) under investigation as EI Site 1. Metals and organic compounds were detected at low levels in subsurface soil.

Storage of hazardous substances occurred at Building 705: 55 gallons of antifreeze, 55 gallons of glyco-containing washer, and 110 gallons of motor oil annually for the past fifteen years. An underground tank for the accumulation of waste oil was located at Building 705 until 1993. an underground tank for storage of fuel oil was located at Building 701; it was removed in 1987. No releases have been reported.

Subparcel 6: Former rifle and pistol ranges under investigation as EI Sites SM22 and SM23. Metals were detected in surface and subsurface soil, and sediment samples at these sites.

Former wastewater treatment plant under investigation as EI site 26. Organic compounds and metals were detected at low concentrations in surface soil.

Former water treatment facility site under investigation as EI Site 25I. Organic compounds and metals were detected at low concentrations in surface soil.

Subparcel 8: A 2000-gallon underground fuel storage tank was located at Building 500 from 1945 to 1991; a 550-gallon underground fuel oil storage tank was located at Building 501 from 1960 to 1991' and an underground fuel oil storage tank was removed from Building 502 in 1991. No release has been reported related to these tanks.

5.2 Asbestos

Asbestos surveys indicate no presence of damaged friable asbestos in the parcels proposed for lease.

5.2.1 Subparcel 1 and 2a: contain no buildings. Presence of asbestos-containing material not suspected.

5.2.2 Subparcels 3-8: Asbestos-containing material may be present in all buildings located in these subparcels.

NOTICE OF STORAGE, RELEASE OR DISPOSAL OF HAZARDOUS SUBSTANCES OR PETROLEUM PRODUCTS AS REQUIRED BY THE COMPREHENSIVE ENVIRONMENTAL RECOVERY, COMPENSATION, AND LIABILITY ACT, SECTION 120 (H) (1):

LOCATION	MATERIAL STORED/ QUANTITY	DURATION	RELEASE/ DISPOSAL
SUBPARCEL 3 Building 810	-diesel fuel and gasoline/ 100 gal.	15 years	RFI Site SWMU 11 (metals, PCB)/none
SUBPARCEL 4 Building 806	- liquid petroleum gas/5 gal.	10 years	none/none
SUBPARCEL 5 Building 806	- fuel oil in underground tank	28 years	none/none

Building 705	- antifreeze/55 gal.	15 years	EI Site 1
(metals,organics)/none	- glycol-containing washer/ 55 gal		
	- motor oil/ 110 gal.	15 years	
	- waste oil in underground -storage/550 gal.	10 years	
West of Lawton Loop	none	NA	EI Site SM25j (metals, organics)/possible
SUBPARCEL 6 Foreman/ Pistol Range SM23	none	NA	EI Sites SM22 and (lead, metals)/none
Sewage Plant Site	none	NA	EI Site SM26 (possible)/none
Water Treatment Plant Site	none	NA	EI Site SM25i (metals, organics)/none
SUBPARCEL 8 Building 500	- fuel oil/ 2000 gal.	46 years	none/none
Building 501	- fuel oil/ 550 gal.	31 years	possible/none
Building 502	- fuel oil/ 550 gal.	31 years	none/none

5.3 Lead-Based Paint (LBP)

A lead-based paint survey has been conducted of installation residences and childcare facilities. All buildings constructed before 1978 are assumed to contain lead-based paint.

5.3.1 Subparcel 1 and 2: Contain no buildings, Presence of LEP is not suspected.

5.3.2 Subparcel 3 : LBP may be present in Building 810, given its age.

5.3.3 Subparcel 4: LBP may be present in Buildings 800-803 and 805-809, given the age of the structures.

5.3.4 Subparcel 5: LBP may be present in Building 700-707 and 710-711, given the age of the structures.

5.3.5 Subparcel 6: LBP may be present in Building 674, 811, 812, 814, and 815, given the age of the structures.

5.3.6 Subparcel 7: LBP may be present in Building 550, 551, 555-557, 560, and 561, given the age of the structure.

5.3.7 Subparcel 8: LBP may be present in Building 500, 502, 504-508, 526, and 537-539, given the age of the structures.

5.4 Unexploded Ordnance

The Draft Ordnance and Explosive Waste Archives Search Report indicates no concern for unexploded ordnance in the subparcel proposed for lease.

5.5 Remediation

Depending on the results of ongoing investigations, some type of remedial action may be required in Subparcel 3, 5, and 6 proposed for lease.

5.6 Department of Defense Environmental Category Application to Parcels

5.6.1 Subparcels 1, 2a, and 7: Classified in DOD Environmental Condition Category 1: Areas where no storage, release, or disposal of hazardous substances or petroleum products has occurred.

5.6.2 Subparcel 4: Classified in DOD Environmental Condition Category 2: Areas where storage only of petroleum products occurred for a year or more, but no release or disposal has occurred.

5.6.3 Subparcel 3, 5, 6, 8: Classified in DOD Environmental Condition Category 6: Areas where storage or release of hazardous substances or petroleum products has occurred, but required actions have not yet been implemented.

6. FINDING OF SUITABILITY TO LEASE

On the basis of the above results from the site-specific EBS and subsequent investigations, certain terms, conditions, reservations, restrictions, and notifications are required for the proposed lease. Environmental Protection Provisions are attached and will be included in the lease documents. (See Attachment 2) The Leased Premises may be used by the Lessee pursuant to the terms and conditions specified in the lease, including the use restrictions detailed in the attached Environmental Protection Provisions. Furthermore, notifications of hazardous substance storage, release, and disposal on the property shall be provided in the lease documents, as required under Department of Defense (DOD) FOSL Guidance.

Based on information detailed in the EBS and references cited therein, I have

concluded that all Department of Defense requirements to reach a Finding of Suitability to Lease have been fully met for the subject property.

/signed/

Raymond J. Fatz

Acting Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA (I,L&E)

ENVIRONMENTAL PROTECTION AGENCY REGION V (US EPA)
REQUESTS ATTACHMENT OF FOLLOWING RESERVATION:

Without independent investigation or verification of the information contained in the base-wide Environmental Baseline Survey (EBS) and in the subject supplemental EBS for the Lease of 1475 Acres of Land for a State Park at Fort Benjamin Harrison, the U.S. EPA submits comments solely for the purpose of leasing the State Park parcel acreage and building at Fort Benjamin Harrison under Section 120 (h) of CERCLA. Nothing in this review should be construed to constitute the covenant required for transfer by subparagraph (B) (I) of Section 1230 (h) (3) of CERCLA or a concurrence that a property is uncontaminated pursuant to Section 120 (h) (4) of CERCLA.

The U.S. EPA will provide any such covenant or concurrence under separate cover. The U.S. EPA expressly reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, relating to the subject State Park parcel acreage and buildings at Fort Benjamin Harrison located in Lawrence, Indiana.

Attachment 2

ENVIRONMENTAL PROTECTION PROVISIONS

LEASE OF FORT BENJAMIN HARRISON STATE PARK PARCEL TO THE STATE OF INDIANA

1. The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the leased premises, nor sublet the leased premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of the Government. In addition, the

Lessee shall not use the leased premises ,or any portion thereof, for any uses other than the operation of a state park, without the prior written consent of the Government. Such consent shall not be unreasonably withheld or delayed. If the Army determines that any requested change in use under this lease has not been adequately analyzed under applicable environmental laws and regulations, the Lessee shall provide additional environmental analysis and documentation, at the Lessee's expense, to the Army as necessary to comply with said laws and regulations. In granting approval for the change in use, the Army may impose such additional environmental protection provisions as it deems appropriate based upon the completed environmental analysis and documentation. Every sublease shall contain the Environmental Protection Provisions herein.

2. The Lessee and any sublessee shall comply with the applicable federal, state, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises.

3. The Lessee and any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits. The Army will not make available any permit for use by the Lessee or any sublessee or tenant.

4. The Government's rights under this Lease specifically include the right of Government officials to inspect upon reasonable notice the lead Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee or sublessee twenty-four (24) hours' prior notice of its intention to enter the Lease Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

5. The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any sublessee, normally not less than 24 hours, to enter upon the Leased Premises for the purposes enumerated in these subparagraphs:

a) to conduct investigations and surveys, including, where necessary, materials sampling, wipe sampling, drilling, soil and water sampling, test-pitting, and other activities related to the Fort Benjamin Harrison environmental program;

b) to inspect field activities of the Government and its contractors and subcontractors in implementing the Fort Benjamin Harrison environmental program;

c) to conduct any test or survey related to the implementation of

the environmental program or environmental conditions at Fort Benjamin Harrison or to verify any data submitted to the Environmental Protection Agency (EPA) or the State of Indiana (IDEM) by the Government relating to such conditions;

d) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the Fort Benjamin Harrison environmental program, including, but not limited to, cleaning of building interiors and exteriors, monitoring wells, pumping wells, soil excavation and treatment facilities;

e) to conduct Environmental Compliance Assessment System (ECAS) surveys.

6. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and the State of Indiana by certified mail a copy of the agreement or sublease of the Leased Premises within (14) days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

7. The Lessee and any sublessee shall comply with the provisions of any health or safety plan in effect under the Fort Benjamin Harrison environmental program during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with the Lessee and any sublessee. The Lessee and any sublessee shall have no claim on agent, employee, contractor, or subcontractor thereof. In addition, federal, state, and local occupational safety and health regulations.

8. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, and associated State of Indiana regulations. The Lessee must provide at its own expense hazardous waste management facilities, complying with all applicable laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

9. Department of Defense (DOD) component accumulation points for hazardous and other wasters will not be used by the Lessee or any sublessee. Neither will the Lessee or sublessee permit its hazardous wastes to be commingled with hazardous waste of the DOD component.

10. The Lessee shall prepare and maintain a Government-approved plan in accordance with all applicable environmental regulations for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such plan shall be independent of Fort Benjamin Harrison and shall not rely on government personnel or equipment. Should the Government provide any personnel or equipment because the Lessee was not, in the opinion of the Fort Benjamin Harrison Base Realignment and Closure Environmental Coordinator, conducting timely cleanup actions, the

Lessee agrees to reimburse the Government for its costs.

11. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any alterations, additions, or improvements to or installations upon or otherwise modify or alter the Leased Premises in any way which may adversely affect the Fort Benjamin Harrison environmental program, environmental cleanup, human health, the environment, cultural and historic resources, and endangered or threatened species without the prior written consent of the Government. Such consent may include requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the Leased Premises.

12. The Lessee shall not conduct or permit its sublessees to conduct any surface or subsurface excavation, digging, drilling, or other disturbance of the soils without the prior written approval of the Government with the exception of emergency repair of existing utilities; in which case the Government shall be notified of the action as soon as is practicable.

13. a. NOTICE OF THE PRESENCE OF ASBESTOS:

The property existing on the date of this conveyance may contain certain amounts of asbestos in the floor tile, linoleum and associated mastic, asbestos-containing pipe and tank insulation, heating, ventilating, and air conditioning vibration joint cloths, exhaust flues, acoustic ceiling treatment, siding, drywall, drywall compound, debris in some of the buildings, and incidental amounts in the window putty or gasketing, etc.

The grantee covenants and agrees, on behalf of it, its successors and assigns, that in its use and occupancy of the property, it will comply with all applicable laws relating to asbestos, and that the grantor assumes no liability for damages for personal injury, illness, disability or death, to the grantee, its successors or assigns, or to any other person including members of the general public, arising from or incident to the purchase, transportation, removal, handling, alterations, renovations, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property described in this lease, regardless of whether the grantee, its successors or assigns, have properly warned or failed properly to warn the individual(s) injured.

b. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (this is a new notice, i.e., not the same one on the sample FOSL for FBH)

Every lessee of any interest in residential real property on which a residential dwelling was built prior to 1978, is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired

memory. Lead poisoning also poses particular risk to pregnant women.

Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and conditions of painted surfaces is contained in

No other records or reports pertaining to lead-based paint or lead-based hazards are available. The lessee hereby acknowledges receipt of the information described in this paragraph and the lead-hazard information pamphlet that is federally required.

The lessee and/or sublessee shall not permit the use of any structure for residential habitation without first abating and eliminating lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations. Residential structures are defined as any house, apartment, or structure intended for human habitation, including but not limited to a non-dwelling facility commonly used by children under seven (7) years of age such as a child care center, elementary school, or playground.

14. The Leased Premises include areas undergoing investigation for possible environmental contamination. Environmental investigation sites are identified in Appendix B of Attachment 2. These sites will be indicated on the ground by warning signs. The Lessee shall not enter or permit others to enter these areas unless written permission is received from the Army.

15. The Army may impose any additional environmental protection conditions and restrictions during the term of this lease that I deems necessary by providing written notice of such restrictions to the Lessee.