

MEMORANDUM OF AGREEMENT

BETWEEN THE

MILITARY DEPARTMENT OF INDIANA

THE

INDIANA DEPARTMENT OF NATURAL RESOURCES

THE

U.S. FISH AND WILDLIFE SERVICE

AND THE

U.S. NATIONAL PARK SERVICE

1. SUBJECT. This Memorandum of Agreement (MOA) is made and entered into between the Military Department of Indiana (MDI); the Indiana Department of Natural Resources (IDNR); the US Fish and Wildlife Service (USFWS); and the US National Park Service (USNPS), as pertains to provisions for roads, fencing, and the Anti-Terrorism Force Protection (ATFP) Buffer as required by the Department of Defense (DoD). The ATFP Buffer, or “setback”, requirement is applicable to all military Installations, facilities, and activities. Specifically, this MOA addresses the provisions for an ATFP Buffer for the parcel of land being transferred from the IDNR to the MDI; and further identifies the location of said Buffer in relation to the transferred parcel and adjacent properties.

2. REFERENCES. References for this MOA include the Quitclaim Deed executed between the US Government and the State of Indiana on March 17, 1969; preceding and subsequent support documentation, wherein 5,500+/- acres of original Camp Atterbury land was transferred to the State, with specified exceptions, for monetary and other considerations; and, Quitclaim Deed and associated documents pertaining to the transfer of 1,250+/- acres of the 5,500+/- acres of State property from the jurisdiction of the IDNR, to the jurisdiction of the MDI. Specific reference addressing the ATFP Buffer is “DoD Instruction 2000.16”, dated October 2, 2006, wherein all DoD components are directed to adopt and/or comply with the “Unified Facilities Criteria (UFC) 4-010-01”.

3. BACKGROUND. This MOA is necessitated by the transfer of 1,250+/- acres, of the original 5,500+/- acre conveyance, by the State from the IDNR to the MDI. Further, parties involved in the transfer action have determined to provide clarity to the DoD requirement to identify and/or establish Anti-Terrorism Force Protection (ATFP) Buffers at all military Installations, facilities, and activities; especially around the boundary of the Atterbury Fish and Wildlife Area (AFWA) and Camp Atterbury resulting from said property transfer. Additionally, full disclosure of road access and control and the location of the ATFP Buffer, as they relate to the land transfer, as described herein, will serve specific interests of the AFWA, all parties to this MOA, and the general public.

4. OPERATIONAL CONSIDERATIONS. Clarification of road access and control, fencing, and DoD ATRFP Buffer provisions, and the intent of the military, through the auspices of the MDI, as pertains to said provisions, will afford all parties to this MOA with baseline information from which to plan concurrent and joint future activities. Any reference made hereinafter to IDNR property will be that 4,250 +/- acres remaining at the AFWA; and, references to Camp Atterbury will be limited, for the most part, to that 1,250+/- additional acres resulting from the transfer action described herein. All references to boundary or boundaries will be those established through the legal survey and land description provided in the Quitclaim Deed effecting the property transfer.

A. Boundary Identification.

Whereas the Quitclaim Deed, and supporting documents, provides a finite description of the land mass associated with the 1,250+/- acres being transferred from the IDNR at the AFWA to the MDI; and

Whereas the boundaries generally follow the centerline of adjoining roads, streets, and/or throughways, as applicable, or the trace of existing and adjoining properties; and

Whereas, with the exception of Hospital Road and Schoolhouse Road, the adjoining shared roads will be jointly owned by the MDI and the IDNR; and

Whereas the land exchange process, providing for the 1,250+/- acre parcel, determined the exchange parcels to be equal in appraised value, wildlife value, and recreational value as long as the remaining AFWA is unaffected by MDI activities on the exchange parcel, and that the IDNR must demonstrate the ability to provide management control for fish and wildlife management and recreation, including access.

Whereas the boundaries of the 1,250+/- acre parcel generally adhere to the trace as shown in "red" on **Figure 1** to this MOA; and

Whereas the determination of the boundary lines, as fixed and recorded, are consistent with the interests of all parties to the land transfer and this MOA.

B. Anti-Terrorism Force Protection.

Whereas the unyielding, tenacious, and patient nature of terrorists who target DoD interests and activities world-wide dictates that existing and past policies and practices regarding threat deterrence and mitigation be examined; and

Whereas, through that examination, the DoD directed that specific and direct mitigating action be taken at all military Installations, facilities, and activities; and

Whereas the intent of mitigating action is to minimize the possibility of mass casualties in DoD buildings or facilities resulting from terrorist attempts to target DoD personnel using explosive and/or other destructive devices; and

Whereas the direction given by the DoD, under “Instruction 2000.16”, is applicable to all military forces including those with the MDI and its agents at Camp Atterbury; and

Whereas requirements promulgated by “Instruction 2000.16” include implementation of the provisions for the ATFP Buffer, as provided in “Unified Facilities Criteria 4-010-01”, whereby military Installations and agencies will identify and establish specific ATFP Buffer or setback distances within the boundary and/or boundaries to minimize the potential for presenting DoD facilities or personnel as “targets of opportunity” for terrorists.

C. ATFP Demarcation and Maintenance.

Whereas the ATFP Buffer is to be identified and established within the physical boundary and/or boundaries of a military Installation and/or at all points of public access thereto; and

Whereas the 1,250+/- acre parcel being transferred to the MDI establishes new boundary traces for Camp Atterbury as shown in **Figure 2**; and

Whereas the ATFP Buffer, as required by DoD, occurs within the confines of the Installation, it will have no direct or indirect impact or influence beyond its boundaries, or on any activities or operations conducted thereon; and

Whereas the intent of all parties to this MOA is to stipulate that the ATFP Buffer or setback distance is no less than 150 feet from the boundary traces, as shown as the “yellow” hash marked area between the “red” boundary trace and the companion solid “yellow” trace on **Figure 1**, is the sole the responsibility of the MDI, and is entirely within the new boundary traces; and

Whereas the military may determine, if necessitated by operational demands, to install or erect fencing or other physical barrier, temporary or permanent, circuitous to the boundary trace, said fencing or barrier will not prohibit ingress or egress to the AFWA transitional Enclave; and

Whereas placement of fencing and/or other physical barrier by the MDI along the boundary trace will not disrupt public use of any major thoroughway adjacent to the 1,250+/- acres being transferred, specifically Hospital Road and Schoolhouse Road, or public access to Mauxferry Road, Pisgah Lake boat ramp, or the AFWA Shooting Range.

D. Future Development.

Whereas the intent of the DoD ATFP Buffer requirements is to minimize the potential danger to all DoD facilities and personnel from terrorist activity; and

Whereas DoD ATFP Buffer requirements apply to all military Installations, facilities, and activities, including Camp Atterbury; and

Whereas the ATFP Buffer, which is no less than 150 feet from the boundary trace, and within the confines of the Installation, will prohibit the construction or use of any building and/or other structure that will be occupied by personnel employed at, or assigned to Camp Atterbury; and,

Whereas the DoD ATFP Buffer established at Camp Atterbury, including the parcel described herein, and as shown on Figure 1 attached hereto, has no impact, direct or indirect, on the AFWA or its operations, future development, user activities, or the general public.

E. Throughway Management.

Whereas the intent of all parties to this MOA is to provide for unrestricted continuity of AFWA operations; and

Whereas reasonable and uncontrolled access must be afforded the AFWA operations within the transitional Enclave, described elsewhere, and the remaining 4,250+/- acres of the 5,500+/- acre original conveyance for IDNR staff and the public; and

Whereas the MDI has no intention to close any major throughway around the boundary of the 1,250+/- acres being transferred, specifically Hospital Road, or to adversely impact public access to Mauxferry Road, Pisgah Lake boat ramp, or the AFWA Shooting Range from Hospital Road; and

Whereas the MDI, the IDNR, and others will jointly hold roads serving as the boundary including Schoolhouse Road, Burnside Street (outside the transferred boundaries), Anderson Street, and Mauxferry Road; and

Whereas the MDI, or its agents, has no immediate requirement to close or otherwise restrict public access to Burnside Street or North Street where they traverse the 1,250+/- acre parcel, both Burnside Street and North Street will be closed in the future, when deemed necessary to support military operations; and

Whereas all boundary fencing, including construction and maintenance, will be the responsibility of the MDI and will be no less than 20 feet from the roadway center line on the MDI side of the transferred parcel; and

Whereas, with the exception of Hospital Road, the IDNR will be responsible for the maintenance and operation of boundary roads shared with the MDI.

F. Restrictions on Adjacent Land.

Whereas the purpose of the AFWA will continue unchanged on the remaining 4,250 +/- acres, of the original conveyance, following the land transfer; and

Whereas the identification and establishment of the ATFP Buffer will be limited to the area within the physical boundary traces of the transferred parcel, established by official survey, and follow a notional path no less than 150 feet around and inside the boundary trace, as shown on Figure 1 of this MOA; and

Whereas the development and enforcement of recreation rules/requirements at the AFWA, to include the use of firearms, remains the sole responsibility of the IDNR; and

Whereas the DoD ATFP Buffer standards, as described herein and implemented by the MDI through its agents at Camp Atterbury, will have no adverse impact on operations of the AFWA, any other adjoining property owner, or any party to this MOA.

G. Operational Sovereignty.

Whereas all parties to this MOA acknowledge the need to maintain the functional integrity of the IDNR and the MDI, each with separate authorities and responsibilities; and

Whereas the MDI, or its agents at Camp Atterbury, will not interfere with the operations or functions of the AFWA of the IDNR within the transitional Enclave, described elsewhere, or impede ingress or egress routes thereto; and

Whereas the operational and propertied integrity of the AFWA has been, and will remain wholly independent of the operational interests and intentions of the MDI, or its agents; and

Whereas the MDI shall contain its operations and functions within the bounds established for the 1,250+/- acres; and

Whereas it is in the best interest of the parties to this MOA, and the general public, that all DoD ATFP Buffer requirements be accommodated within the bounds established through the land transfer action.

H. Covenant Formalization and Establishment.

Whereas all parties to this MOA seek to provide specificity and clarity to the DoD required ATFP Buffer, as delineated herein, and its relationship to the remaining IDNR property of the AFWA following the land transfer action; and

Whereas all parties to this MOA seek to provide specificity and clarity to the operation of access roads, boundary fencing as described herein, and their relationship to the remaining IDNR property of the AFWA following the land transfer action; and

Whereas the parties to this MOA seek to ensure the rights, responsibilities, and operational sovereignty of the two State agencies, the IDNR and the MDI, are not abridged, but are protected for the duration of this MOA; and

Whereas the DoD ATFP Buffer requirements, as described herein, have been promulgated, for the most part, to protect the lives of DoD personnel, as well as the general public.

Now therefore, in consideration of the foregoing and the mutual covenants contained herein, the parties hereto agree as follows:

a. The DoD ATFP Buffer and setback requirements are the sole responsibility of the MDI and its operating agents.

b. That the ATFP Buffer will be identified/located inside the boundary traces of the 1,250+/- acres, as established by the official survey.

c. That said ATFP Buffer will be notional in nature, physically unmarked, and be no less than 150 feet wide, following a circuitous route along and inside the Camp Atterbury property boundary.

d. That the establishment of the required DoD ATFP Buffer will not have any direct or indirect adverse impact on the AFWA, or any other adjoining properties.

e. That no habitable buildings, structures, and/or support facilities will be constructed within the area indentified herein as the ATFP Buffer and setback, consistent with the DoD intent to minimize terrorist threat to military personnel and property.

f. That no fencing and/or physical barrier, temporary or permanent, associated with the ATFP Buffer will be established, installed, or erected which would prohibit ingress or egress to the transitional Enclave by AFWA staff or the general public, from Hospital Road, Eggleston Street, or Rowe Street.

g. That the MDI has no intention to close any major throughway around the boundary of the 1,250+/- acres, specifically Hospital Road and Schoolhouse Road, or to impact public access to Mauxferry Road, the Pisgah Lake boat ramp, or the AFWA Shooting Range.

h. That, excluding areas discussed elsewhere in this document, all boundary fencing of the transferred property will be the responsibility of the MDI.

i. That all the maintenance and operation of the adjacent shared boundary roads will be under the control and the responsibility of the IDNR.

j. That the sovereignty of the IDNR, and/or other adjoining property owners, will not be impinged by the identification and establishment of the DoD required ATFP Buffer by the MDI, or any of its operating agents.

5. AMENDMENT. Alteration, modification, and/or amendment of this MOA is not permitted, except by written document with the concurrence and signatures of all parties. Each party, therefore, represents that it will not participate in any future agreement or understanding not reduced to writing and incorporated into this MOA as a written amendment prior to execution

6. DISPUTE RESOLUTION. In the event of a dispute between the parties pertaining to a particular practice or activity, other than Wildlife and Sport Fish rule interpretation, the parties shall first attempt to resolve the dispute through informal consultation and communication, or other forms of non-binding, and mutually acceptable, dispute resolution. The parties further agree that, in the event such measures fail to resolve the dispute; they will refer it for resolution to another mutually acceptable entity for arbitration. For disputes or conflicts that arise related to

Wildlife and Sport Fish Restoration Program rule interpretation, the USFWS appeal and resolution process will be used.

7. INTEGRATION. This MOA, any document discussed herein, as well as any subsequent amending documents, represent the entire understanding among and between all parties. By signing this MOA, the parties acknowledge that no other oral or written agreements regarding the ATFP Buffer identified herein; or the specifications thereof, or the ownership responsibilities defined herein; or associated rights, responsibilities, or liabilities exist; and that if any such oral or written agreements exist, they are hereby superseded.

8. RESPONSIBILITIES AND LIABILITY. Parties to this MOA are absent any shared responsibility for the identification, establishment, or maintenance of the DoD required ATFP Buffer, unless otherwise specified herein. Further, all parties to this MOA are held harmless, both individually and jointly, for any claims of damage associated with the designated ATFP Buffer established circuitous to, and within the boundary traces of Camp Atterbury.

9. DURATION AND TERMINATION. This MOA will commence upon the signing by all designated party representatives; and will remain in effect, in its present and/or amended form, for an indefinite period. However, this MOA may be terminated, with the written consent of all parties, if prevalent conditions change or are negated by unforeseen future circumstances.

Therefore, and with the due diligence afforded them as authorized representatives of the parties to this MOA, as identified herein, the parties, having read and understood the content, do, by their respective signatures dated below, hereby agree to the provisions of this MOA.

Signatories to ATRP Buffer MOA:

Military Department of Indiana

Indiana Department of Natural Resources

By Marken Huber
Adjutant General

By Scott Gant
Director

Date 1 Oct 2010

Date 9/30/2010

US Fish and Wildlife Service

US National Park Service

By Charles M. Wooley
Midwest Regional Director

By Michael J. Regan
Northeast Regional Director

ACTING

Date 10/5/10

Date 10/8/10

Charles M. Wooley
Acting Regional Director

Attachment:
Figure 1 – Force Protection Map

Figure 1. Force Protection Map

-  Exchange Boundary
-  Force Protection Setback
-  DNR Enclave

0 1,125 2,250 Feet

Map by N. Eaton, Indiana National Guard • 22 Jul 2010

