MEMORANDUM OF AGREEMENT

BETWEEN THE

MILITARY DEPARTMENT OF INDIANA

THE

INDIANA DEPARTMENT OF NATURAL RESOURCES

AND THE

U.S. FISH AND WILDLIFE 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), and the US Fish and Wildlife Service (USFWS), as pertains to the designation of a transitional Enclave for the operational use of the IDNR, located within Camp Atterbury. Specifically, this MOA addresses a mutually defined area, 8+/- acres in size, falling within the parcel of land being transferred to the MDI, and located north of Hospital Road in Johnson County. Descriptions and definitions pertaining to ownership of the designated Enclave area; ownership and maintenance of associated facilities and structures located thereon; future structural improvements and/or enhancements; physical demarcation of Enclave bounds and points of access; and operational sovereignty of IDNR as relates to the Atterbury Fish and Wildlife Area (AFWA) will be delineated herein.

2. REFERENCES. References for this MOA include the Quitclaim Deed executed between the US Government and the State of Indiana on March 17, 1969; all 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. Among the various provisions, conditions, and exceptions addressed in the Deed for the 1,250+/- acres is a provision to reserve "ownership, and unlimited access and use of the improvements" thereto, and as mutually agreed to, on an area of 8+/- acres of land transferred. Furthermore, Deed provisions also reserved "all incidences of ownership, including the responsibility for maintenance and repairs" for the IDNR improvements residing within the identified transitional Enclave bounds.

3. BACKGROUND. This MOA is necessitated by the transfer of property interests in 1,250+/- acres, of the original 5,500+/- acre conveyance, by the State from the IDNR to the MDI. Further, parties to the property transfer action have determined to provide clarity to various aspects of the establishment of an Enclave, to be transitional in nature, for the IDNR operations, in support of the AFWA, for an indefinite period. Additionally, all parties to the transfer action agree that reservation of the present headquarters, support facilities, and improvements within the Enclave,

as defined herein, for the AFWA of the IDNR, serves the interests of all, including the general public.

4. ENCLAVE SPECIFICATIONS. Establishment of a transitional Enclave for use by the AFWA of the IDNR, for an indefinite period, is accomplished by agreement of the MDI and the IDNR, and with the concurrence of all other parties to this MOA. The Enclave, and associated provisions and constraints, is established to provide continuity of operations for the AFWA after land upon which the present headquarters and support facilities are located is transferred to the MDI, as part of the transferred 1,250+/- acres, as referenced herein. This MOA is a baseline of information, including a physical description of the 8+/- acres, from which mutually acceptable procedures and guidelines can be developed for operations within the Enclave.

A. <u>Ownership Considerations.</u>

Whereas the Quitclaim Deed, and supporting documents, has stipulated, as part of the land transfer process, that ownership of the AFWA headquarters offices and support facilities residing within the bounds of the 1,250+/- acres being transferred to the MDI will remain with the IDNR; and

Whereas said ownership and unimpeded use will be retained for an indefinite period, subject to periodic review, and/or until such time as it is no longer mutually beneficial to the MDI and the IDNR, and other parties to this MOA; and

Whereas the AFWA headquarters offices and support facilities residing within the bounds of the 1,250+/- acres were primarily built with federal funding through the US Wildlife and Sport Fish Recreation Program, via the US Fish and Wildlife Service, and under grant #FW22D26, approved July 1, 1994; and

Whereas said AFWA operational support facilities, owned by the IDNR, and located within the 1,250+/- acres, will reside within the bounds of the Enclave established herein, and with the conditions afforded thereto; and

Whereas the Enclave, established herein for use by the AFWA, consists of 8+/- acres of land owned by the MDI, will remain available to the IDNR for an indefinite period, or until such time as it becomes mutually beneficial to the IDNR and the MDI, and with the concurrence of all parties to this MOA, that the IDNR facilities within the Enclave be vacated; and

Whereas ownership of the AFWA headquarters offices, support facilities, and other approved improvements residing within the Enclave will be transferred to the MDI, as jointly determined by the IDNR and MDI, when vacated, and upon mutually acceptable terms and meeting all conditions of disposal or transfer of facilities constructed or acquired using funding support through the Wildlife and Sport Fish Restoration Program of the USFWS.

B. Facilities and Structures.

Whereas the 8+/- acre Enclave, as established herein, consists of the properties of two distinct and independent agencies of the State of Indiana, each with separate rights, responsibilities, and authorities; and

Whereas the land within the bounds of the Enclave is owned by the MDI; and

Whereas the AFWA headquarters offices, support facilities, other improvements, and all appurtenances thereto are owned by the IDNR; and

Whereas the IDNR property, as resides within the Enclave, consists primarily of 2 structures, to include an 8,000+/- sq ft office complex and a 4,000+/- sq ft maintenance building; and

Whereas the office complex is accompanied by 2 asphalt parking lots consisting of 750+/- sq yd of area and a larger asphalt parking area northeast of the office building, east of Rowe Street, providing an additional 5,750+/- sq yd of visitor parking; and

Whereas the maintenance building is located within a 1+/- acre fenced compound and includes an asphalt parking area and 2 unpaved equipment storages areas; and

Whereas any additional AFWA headquarters and operations related facilities, and/or appurtenances thereto, remain IDNR property until properly vacated, as described herein.

C. Future Development.

Whereas ownership of structures and facilities associated with AFWA operations is retained by the IDNR for an indefinite period, or until such time as it becomes mutually beneficial to the MDI and the IDNR that said ownership interest be vacated, as described herein; and

Whereas the intent of all parties to this MOA is that the Enclave be primarily transitional in nature, albeit for an indefinite period and subject to periodic review, and

Whereas additional structures, facilities, or enhancements to existing structures or facilities would influence the value of IDNR property interests within the bounds of the Enclave, notwithstanding ordinary maintenance and/or upkeep of the facilities.

D. Bounds and Demarcation.

Whereas the intent of parties to this MOA is to provide continuity of the IDNR AFWA operations, for an indefinite transitional period, as described herein; and

Whereas the land parcel required to adequately support said continuity operations has been identified as 8+/- acres by all parties to this MOA; and

Whereas reasonable metes and bounds must be identified to provide said continuity, and promote sovereignty of operations between the IDNR and the MDI; and

Whereas reasonable and uncontrolled access must be afforded the AFWA operations within the Enclave, for IDNR staff and the public; and

Whereas the IDNR and the MDI have agreed that primary access to the Enclave by AFWA staff and the public will be by way of Rowe Street and Eggleston Street from Hospital Road; and

Whereas the MDI or the IDNR will not establish a formally fixed, controlled, or fenced boundary for the Enclave, unless otherwise prompted by vandalism or other malicious activity, without consultation with all parties to this MOA.

E. Operational Sovereignty.

Whereas the Enclave, as identified and delineated herein, is established to provide continuity of operations for the AFWA following the land transfer action; and

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 it is the best interest of all parties to this MOA, and the general public, that IDNR operations by the AFWA staff within the Enclave, be wholly independent and without review or restriction by the MDI, or its agents, unless otherwise provided herein; and

Whereas the MDI will not interfere with the operational functions of the AFWA within the Enclave, or impede ingress or egress routes thereto, and will only request consultation pertaining to planned improvements to existing structures or facilities, or appurtenances thereto, as relates to changes in property valuation.

F. Covenant Formalization and Establishment.

Whereas all parties to this MOA seek to provide specificity and clarity to the identification, establishment, and ownership responsibilities of, and for the transitional Enclave for indefinite occupation by the AFWA operations headquarters; and

Whereas parties to this MOA seek to ensure the separate rights and responsibilities of the two State agencies, the IDNR and the MDI, are not abridged, but are protected for the duration of this MOA; and, that provisions offered herein ensure effective operational sovereignty of both; and that collaboration will provide for amicable dissolution of this MOA.

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

a. The ownership of the aforesaid transitional Enclave land, 8+/- acres of the 1,250+/- acres transferred to the MDI, rests with the MDI.

b. That ownership of the AFWA headquarters offices, support facilities, other existing improvements, and all appurtenances thereto, residing within the metes and bounds of the Enclave established herein, will rest with the IDNR until those property interests are vacated to the satisfaction of all parties to this MOA. Replacement of AFWA facilities must be acceptable to the IDNR and the USFWS, and must meet all conditions for disposal or transfer of facilities constructed or acquired using funding support through the Wildlife and Sport Fish Restoration Program of the USFWS.

c. That said IDNR ownership of AFWA structures and facilities, as described herein and residing within the Enclave, will be transferred to the MDI upon acceptance by the IDNR and USFWS of replacement facilities.

d. That utility service and support to AFWA structures and facilities residing within the Enclave will remain the responsibility of the IDNR for the duration of this MOA.

e. That no other structures, support facilities, improvements or enhancements thereto, will be authorized, under conditions expressed herein, without the acknowledgement and consent of the MDI and other parties to this MOA.

f. That the metes and bounds of the Enclave established herein, are, by the very nature of the transitional status, notional, and are generally as depicted on **Figure 1**, appended hereto, and will follow the boundary trace provided thereon, and encompass 8+/- acres.

g. That all grounds maintenance in, and immediately adjacent to the Enclave boundary trace, described above, as well as surface water drainage, will be the responsibility of the IDNR.

h. That no structure, temporary or permanent; and no physical barrier or constraint will be established, installed, or erected which would prohibit ingress or egress by the AFWA staff or general public, to the Enclave from either Hospital Road, Eggleston Street, or Rowe Street.

i. That the sovereignty of the IDNR, specifically as pertains to the AFWA headquarters operations within the Enclave established herein, will not be impinged by the MDI or any of its operating agents.

j. That any damage or acts of vandalism to the IDNR owned AFWA operations structures or support facilities within the Enclave will remain the sole responsibility of the IDNR. Further, if perpetrators of malicious damage or vandalism are identified, and/or apprehended by proper authority, then appropriate legal redress will also be the responsibility of the IDNR.

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, and 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 and/or written agreements regarding the transitional Enclave established herein; and/or the specifications thereof, or the ownership responsibilities defined herein; or associated rights, responsibilities, and 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 maintenance, repair, and enhancement of the AFWA retained headquarters offices, support facilities, and other improvements; or any IDNR operations thereupon, unless otherwise specified herein. Further, all parties to this MOA are held harmless, both individually and jointly, for any damage to the AFWA headquarters offices, support facilities, and other improvements, or associated IDNR property resulting from acts of nature, or malicious activity.

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. This MOA will also be subject to periodic review, necessitated by the transitional nature of the Enclave, with the first instance conducted by the signing parties hereto no later than three years from the date of original signing.

The periodic review will be conducted to ascertain whether or not the IDNR and the MDI have progressed toward a mutually acceptable remedy for the transitional Enclave, as established herein. Subsequent reviews will be conducted, as determined by the parties hereto, to further a conclusion to the basis for the Enclave. Furthermore, 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 Enclave MOA :

Military Department of Indiana

By _____
Adjutant General

1 OCT 2010
Date

Indiana Department of Natural Resources

By _____
Director

9/30/2010
Date

US Fish and Wildlife Service

By _____
ACTING Midwest Regional Director

Charles M. Wooley
Acting Regional Director

10/5/10
Date

Attachment:
Figure 1 – Enclave Overview Map

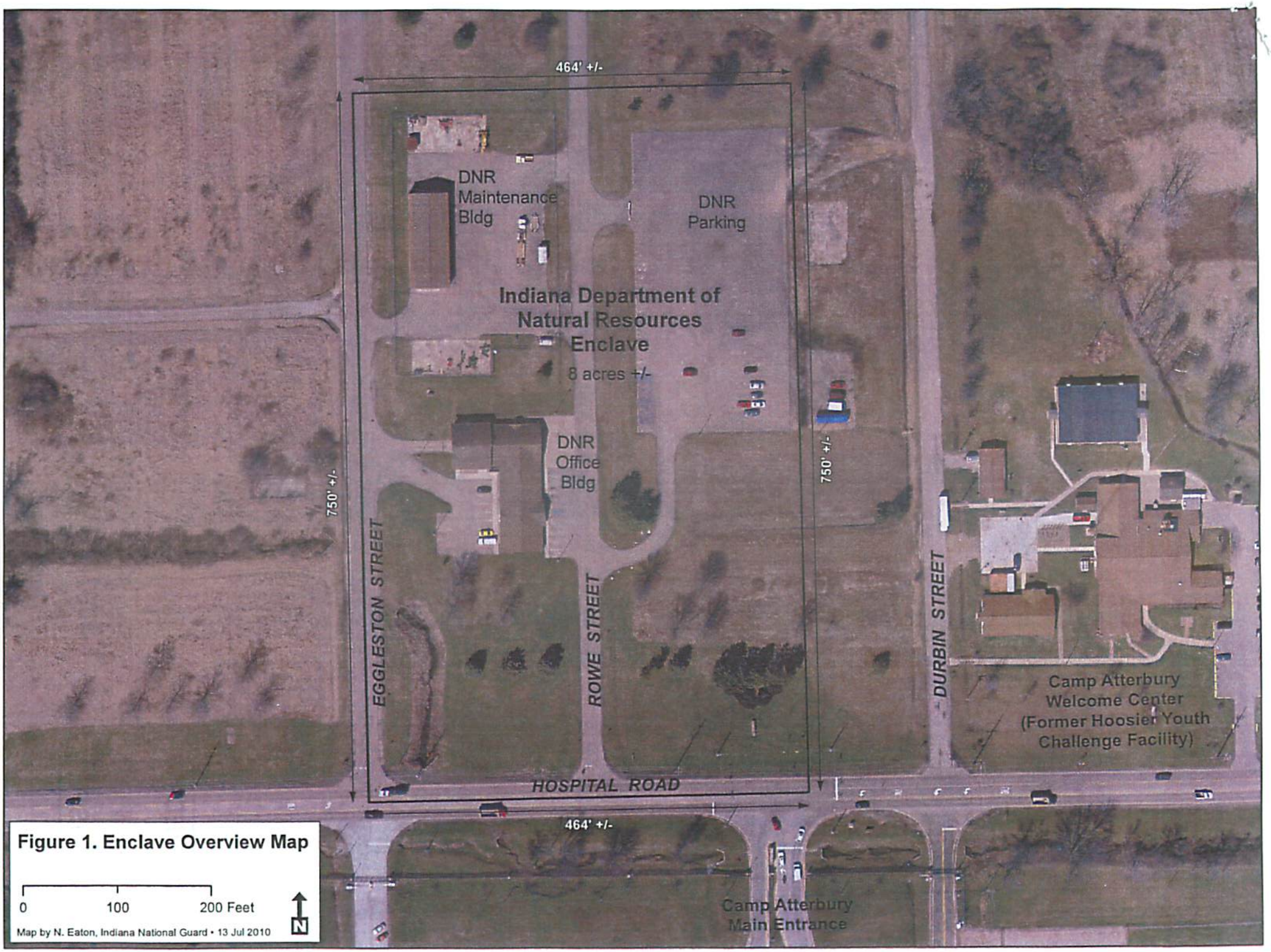

Figure 1. Enclave Overview Map