

APPENDIX C:
MEMORANDA OF AGREEMENT

Rail MOA

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 the US Government owned railroad Right-of-Way (ROW) traversing IDNR owned property at the Atterbury Fish and Wildlife Area (AFWA). Specifically, this MOA addresses mutually defined ROW bounds and physical constraints; ROW and railroad access and maintenance; railroad usage frequency and duration; rail car parking and storage; access to land adjacent to railroad ROW; and malicious damage and vandalism.

2. REFERENCES. References for this MOA include Quitclaim Deed executed between the US Government and the State of Indiana (hereinafter State) on March 17, 1969, and 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. Among the various provisions, conditions, and exceptions was the exception of the railroad spur track and associated easements, with the requisite right of ingress and egress, which was retained by the US Government, without defined meets and bounds.

3. BACKGROUND. This MOA is precipitated by the transfer of property interest in 1,250+/- acres, of the original 5,500+/- acre conveyance, by the State from the jurisdiction of the IDNR to the jurisdiction of the MDI. Additionally, parties to the property transfer action are determined to provide clarity to various aspects of the railroad ROW, and its planned future usage within the remaining IDNR 4,250+/- acre parcel at the AFWA.

4. OPERATIONAL CONSIDERATIONS. Clarification of the operational intent of the military, through the auspices of the MDI, will provide all parties to this MOA with a baseline of information from which to plan concurrent and joint future activities. Any reference made hereinafter to IDNR property will be the 4,250+/- acres remaining at the AFWA following the land transfer action.

A. Railroad Bounds and Constraints.

Whereas the original Deed and supporting documentation failed to establish defined metes and bounds for the railroad track spur ROW; and

Whereas the Deed indicated that the Government retained “railroad spur tracks”; and

Whereas the Deed further stipulated that the Government retained “easements, with the rights of ingress and egress for the purposes of operating, maintaining, replacing, repairing, relocating, and constructing the above-mentioned railroad spur tracks”; and

Whereas the Government, through the auspices of the US Army, has used, maintained, and upgraded the retained railroad track spur traversing the IDNR property over the years; and

Whereas the Government, again through the auspices of the US Army, plans to use, maintain, and upgrade the retained railroad track spur traversing the IDNR property in the future; 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 the use of the railroad ROW; and that the MDI and the IDNR must demonstrate the ability to provide management control for fish and wildlife management and recreation to the USFWS and USNPS.

B. Railroad Access and Maintenance.

Whereas provisions in the original Deed retained for the Government “easements, with the rights of ingress and egress for the purposes of operating, maintaining, replacing, repairing, relocating, and constructing the above-mentioned railroad spur tracks”; and

Whereas periodic and routine maintenance of the railroad track and ROW is required to insure normal train movement and safe rail operations; and

Whereas said maintenance is not limited to rails, ties, ballast, or rail bed; but also includes adjacent and overhead foliage and tree canopy; water flow at river, stream, and causeway crossings; as well as bridge maintenance and repair, and restoration of effects to the AFWA property and recreational uses outside the railroad ROW as result from maintenance activities or acts of nature.

C. Railroad Usage Frequency and Duration.

Whereas the US Army has designated Camp Atterbury, operated under the auspices of the MDI, a Power Generation Platform (PGP), a major construct of national military strategy; and

Whereas said designation requires Camp Atterbury to support up to 10 Brigade Combat Team training events/rotations per year, including the capability of receiving and shipping each rotation's impedimenta by truck and/or rail over a period of 3 days or less in duration; and

Whereas the Government has, through the auspices of the US Army, committed funds to upgrade and expand the rail shipping and receiving capacity at Camp Atterbury; and

Whereas military rail operations, to include rail car parking and/or storage, will be limited to the terminus area within the bounds of the transferred parcel except for normal train movements to and from the main line, over Government owned railroad track traversing the remaining IDNR property; and

Whereas the crossing at Mauxferry Road is not to be blocked by rail cars for any duration beyond that associated with normal train movement between the mainline and the terminus area.

D. Rail Car Parking and Storage.

Whereas the current and future upgraded and expanded rail receiving and shipping terminus area is located within the bounds of the land parcel, 1,250+/- acres, being transferred to the MDI; and

Whereas the railroad track traversing the parcel being transferred to the MDI approximates 4,000 linear feet, and rail traffic and switching activities will be limited to that 4,000 linear feet of train "work area"; and

Whereas military rail operations of shipping/receiving, to be conducted on the Government owned railroad track, will be limited to the track residing within the bounds of the transferred parcel, at or near the terminus area; and

Whereas standard rail operations will include the normal train movements to and from the main line, over the Government owned railroad track traversing the remaining IDNR property; and

Whereas the terrain and grade of the railroad track spur traversing the remaining IDNR property is not conducive to rail car parking, switching, or storage.

E. Adjacent Land Access.

Whereas the purpose of the AFWA is to provide outdoor recreation opportunities and managed wildlife habitat for the public, with oversight by the USFWS and USNPS; and

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

Whereas guidelines have been promulgated by the IDNR regarding the use and care of firearms on, and around public thoroughways for the purpose of State-regulated hunting on the AFWA; and

Whereas the railroad track traversing the IDNR property will be treated as a public thoroughway in the AFWA when in use to support the conduct of military rail operations; and

Whereas the public shall not be denied appropriate recreation activities along, or adjacent to the railroad track ROW, nor shall any part of the ROW other than the track and/or appurtenances thereto, be closed except as directly related to the movement of rail cars during periods of military railroad operations, and

Whereas no structure or physical barrier or constraint will be established, installed, or erected which prohibits ingress or egress to, and/or along the ROW by any party to this MOA.

F. Malicious Damage and Vandalism.

Whereas the railroad track spur traverses IDNR property in isolated reaches of the remaining land of the AFWA; and

Whereas several of the railroad track components and support structures may be viewed as “targets of opportunity” for damage and/or vandalism by visitors to the AFWA; and

Whereas some forms of damage and/or vandalism may place personal safety or property at risk.

G. Covenant Formalization and Establishment.

And, whereas all parties to this MOA seek specificity and clarity to provisions of the original Quitclaim Deed as pertain to ROW metes and bounds and physical constraints; ROW and railroad access and maintenance; railroad usage frequency and duration; rail car parking and storage; access to land adjacent to railroad ROW; and malicious damage and vandalism.

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

a. The aforesaid railroad ROW, with acknowledgment of variations in elevation and geological conditions, consists of a generalized ROW 80+/- feet wide, or 40+/- feet from the railroad track centerline, established along the existing railroad track route for a distance of 10,750+/- linear feet traversing the remaining IDNR property.

b. That no structure, temporary or permanent; and no physical barrier or constraint shall be established, installed, or erected which prohibits ingress or egress to, and/or along the said ROW by any party to this MOA.

c. That, when not in use to support military railroad operations, the ROW traversing the remaining IDNR property will be accessible for recreation use by the public, pursuant to outdoor recreation opportunities and published guidelines of the AFWA.

d. That periodic and routine maintenance of the said ROW will be performed under the supervision of the auspices of the MDI, as required, with notification of the operating agent at the AFWA. Maintenance and repair which exceeds periodic or routine, or will have an effect outside the ROW will be planned and designed with written acknowledgement by all parties to this MOA. Said maintenance is not limited to rails, ties, ballast, or rail bed; but also includes adjacent and overhead foliage and tree canopy; water flow at river, stream, and causeway crossings; as well as bridge maintenance and repair. Applicable permits and/or compliance documents will be secured, with the concurrence of all parties to this MOA, prior to commencing planned maintenance and/or repair.

e. That rail traffic on the railroad track traversing remaining IDNR property, consisting of multiple locomotive/switch engine trips between the mainline and the terminus area, should not have a frequency, or level of occurrence, greater than twice monthly; and, that the twice monthly rail traffic switching operations should not exceed 3 days in duration for each occurrence.

f. Further, it is agreed that written advance notification shall be made by Camp Atterbury to the IDNR, through its operating agent at the AFWA, of any planned rail traffic occurrence as soon as reasonably possible, with a standard of not less than two weeks prior to the occurrence being established. Camp Atterbury will prepare an advisory notification for the AFWA to post and distribute.

g. That the IDNR, through its operating agent at the AFWA, will advise all users of pending military railroad activity and estimated duration. The AFWA advisory will publicize rules for the public, with emphasis that hunting rules in the vicinity of any public thoroughway, including the railroad ROW will apply during periods of military railroad operations

h. That no planned or intentional rail car parking and/or storage will occur on the railroad track traversing the IDNR property at the AFWA.

i. That no planned rail car blockage will occur on the grade crossing at Mauxferry Road on IDNR property beyond that associated with normal train movement between the main line and the terminus area within the bounds of the parcel transferred to the MDI.

j. If any of the aforesaid blockages are warranted by accident or other uncontrollable action, the IDNR will be notified, through its operating agent at the AFWA, at the earliest opportunity, with incident location and estimated duration.

k. That on behalf of the IDNR, AFWA personnel and authorized IDNR law enforcement personnel will, and in conjunction with proper military security, monitor activities of any users that could result in personal injury or property damage.

1. That any damage or acts of vandalism to the railroad track, or any appurtenance thereto, will be reported to the MDI, through its operating agent at Camp Atterbury, as soon as possible. Further, it is agreed that the intent of this provision is to minimize risk to personal safety and property. If perpetrators of malicious damage or vandalism are identified, and/or apprehended by proper authority, then appropriate legal redress will be pursued through the US Army, or its operating agent, the MDI.

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 railroad track spur; the railroad ROW; the military directed operations thereon; 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 railroad spur track and/or ROW; or any military operations thereupon, unless otherwise specified herein. Further, all parties to this MOA are held harmless, both individually and jointly, for any damage to the railroad track spur, ROW, or associated military 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 so long as the said ROW shall remain in use. 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 the Railroad Track Spur ROW MOA:

Military Department of Indiana

Indiana Department of Natural Resources

By _____ By _____

Date Date

US Fish and Wildlife Service

US National Park Service

By _____ By _____

Date Date

Attachment:
Exhibit 1 – Rail Overview Map

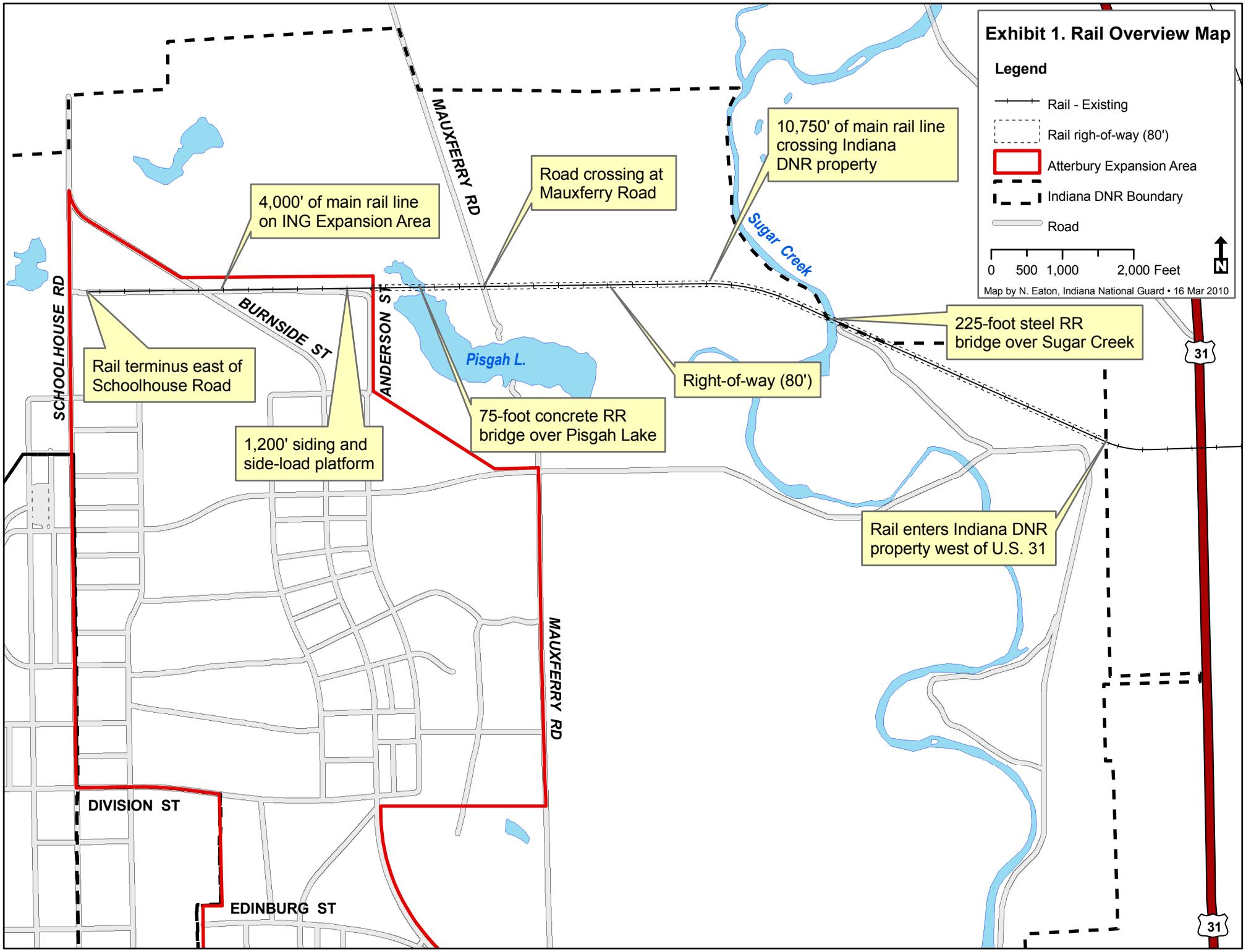
Exhibit 1. Rail Overview Map

Legend

- Rail - Existing
- Rail right-of-way (80')
- Atterbury Expansion Area
- Indiana DNR Boundary
- Road

0 500 1,000 2,000 Feet

Map by N. Eaton, Indiana National Guard • 16 Mar 2010



Enclave MOA

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. Ownership Considerations.

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

Indiana Department of Natural Resources

By _____ By _____

Date Date

US Fish and Wildlife Service

By _____

Date

Attachment:
Figure 1 – Enclave Overview Map



464' +/-

750' +/-

750' +/-

464' +/-

DNR
Maintenance
Bldg

DNR
Parking

**Indiana Department of
Natural Resources
Enclave**

8 acres +/-

DNR
Office
Bldg

EGGLESTON STREET

ROWE STREET

DURBIN STREET

HOSPITAL ROAD

**Camp Atterbury
Welcome Center
(Former Hoosier Youth
Challenge Facility)**

**Camp Atterbury
Main Entrance**

Figure 1. Enclave Overview Map

0 100 200 Feet



Map by N. Eaton, Indiana National Guard • 13 Jul 2010

Buffer MOA

MEMORANDUM OF AGREEMENT

BETWEEN THE

MILITARY DEPARTMENT OF INDIANA

THE

INDIANA DEPARTMENT OF NATURAL RESOURCES

THE

U.S. FISH AND WILDLIFE SERVICE

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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 ATFP Buffer MOA:

Military Department of Indiana

Indiana Department of Natural Resources

By _____ By _____

_____ Date _____ Date _____

US Fish and Wildlife Service

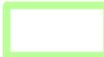
US National Park Service

By _____ By _____

_____ Date _____ Date _____

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

