

AR#63
1461



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333 - 0001

REPLY TO
ATTENTION OF

AMCEN-R

29 MAY 1998

MEMORANDUM THRU Commander, U.S. Army Engineer Division, South Atlantic, ATTN: CESAD-RE, 77 Forsyth Street, Room 313, 77 Forsyth Street, S.W., Atlanta, GA 30335-6801

FOR Commander, U.S. Army Corps of Engineer District, Mobile, ATTN: CESAM-RE-M, P.O. Box 2288, Mobile, AL 36628-0001

SUBJECT: Finding of Suitability to Lease (FOSL-3) for Defense Distribution Depot, Memphis (DDMT)

1. References:

a. Memorandum, AMCEN-R, 3 Apr 97, subject: Report of Availability for a Master Lease with the Memphis Depot Redevelopment Agency.

b. Memorandum, DLSC-BBB, 25 Feb 98, SAB (Encl 1).

2. Enclosed for your action is the approved FOSL-3 (Encl 2) with supporting documentation for adding Buildings 251 and 972 at DDMT to the master lease with Memphis Depot Redevelopment Agency.

3. The approved Report of Availability for the entire installation, including Buildings 251 and 972, was forwarded with reference a.

4. The Final Environmental Assessment for Master Lease, Defense Distribution Depot Memphis, Tennessee, dated Sep 96, is the National Environmental Policy Act Document for this action.

5. Request a modification to the master lease adding Buildings 251 and 972 be executed in accordance with the Report of Availability and FOSL-3.

AMCEN-R

29 May 1998

SUBJECT: Finding of Suitability to Lease (FOSL-3) for Defense Distribution Depot, Memphis (DDMT)

6. Point of contact for this action is Mr. Joe Goetz, AMCEN-R, commercial (703) 617-8904 or DSN 767-8904.

7. AMC -- America's Arsenal for the Brave.

FOR THE COMMANDER:

2 Encls



EARLE C. RICHARDSON

Colonel, GS

Deputy Chief of Staff

for Engineering, Housing,

Environment, and Installation

Logistics

CF: (wo/encls)

Assistant Chief of Staff for Installation Management, ATTN:

DAIM-BO, 600 Army Pentagon, Washington, D.C. 20310-0600

Headquarters, U.S. Army Corps of Engineers, ATTN: CERE-C,

Pulaski Bldg #4133, 20 Massachusetts Avenue, Washington, D.C.
20314-1000

Director, Defense Logistics Agency, ATTN: DLSC-BBB, 8725 John J.
Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221

Commander, Defense Distribution Depot Memphis, ATTN: DDMT-D,
2163 Airways Boulevard, Memphis, TN 38114-5210

cc: CAAEC (Bill Randall)

BRAC Office

GC(L&I) (S. Philo)

4 June 1998
vac

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→→→ CESAM-RE

003/027



DEFENSE LOGISTICS AGENCY
DEFENSE LOGISTICS SUPPORT COMMAND
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-8221

IN REPLY
REFER TO


DLSC-BBB

FEB 25 1998

MEMORANDUM FOR ARMY MATERIEL COMMAND
ATTN: AMCS0

SUBJECT: Memphis Finding of Suitability to Lease (Bldgs 251 and 972)

Attached for your approval and signature is the FOSL for buildings 251 (thrift shop) and 972 (open shed warehouse) located at the former Defense Distribution Depot Memphis, Tennessee. Defense Logistics Agency Environmental, Legal, and Real Estate have coordinated.


LEONARD YANKOSKY
Chief, BRAC Program Management Team

Attachment



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004/027

**FINDING OF SUITABILITY TO LEASE
(FOSL)**

Parcel 4.12 and Parcel 27.2

Defense Distribution Depot Memphis, Tennessee

(FOSL Number 3)

May 20, 1998

1. PURPOSE

The purpose of this Finding Of Suitability To Lease (FOSL) is to document the environmental suitability of certain parcels of property at Defense Distribution Depot Memphis, Tennessee (DDMT) for leasing to the Depot Redevelopment Corporation (DRC) consistent with the Department of Defense (DOD) and Army policy. The expected reuse of the properties are as follows: Building 251 - Portion of a Police Department Precinct; Building 972 - Wood Pallet Production. Expected reuse includes light industry, storage or general office use. In addition, this FOSL identifies use restrictions as specified in the text and attached Environmental Protection Provisions (Enclosure 5) necessary to protect human health or the environment and to prevent interference with any existing or planned environmental restoration activities.

2. PROPERTY DESCRIPTION

The proposed property to be leased consists of 6.52 acres that include two BRAC parcels. The two parcels are identified as 4.12 (Building 251) and 27.2 (Building 972). A site map of the property proposed to be leased can be found at Enclosure 1.

3. ENVIRONMENTAL CONDITION OF THE PROPERTY

A determination of the environmental condition of the facilities has been made based on the Community Environmental Response Facilitation Act (CERFA) Letter Report, dated December 5, 1996 and an Environmental Baseline Survey (EBS), dated November 6, 1996. The information provided is a result of a complete search of agency files during the development of the CERFA Letter Report and EBS. The following documents also provided information on environmental conditions of the property: Draft Final BRAC Cleanup Plan Version 2 (DDSP-FE, November 1997), Asbestos Reinspection (DDC-WP, October 1996), Final Environmental Assessment for Master Interim Lease (Tetra Tech, September 1996), Remedial Investigation Soil Sampling Letter Report (CH2M Hill, May 1997), OU - 2 and OU - 3 Field Sampling Plans (CH2M Hill, September 1995), Asbestos Identification Survey (Pickering, December 1993 and January 1994), RCRA Facilities Assessment (A.T. Kearney, Inc., January 1990), Final Remedial Investigation Report (Law Environmental, August 1990) and the Installation Assessment (USAEHA, March 1981).

3.1 Environmental Condition of Property Categories

The properties that are being considered for lease are classified as DOD Environmental Condition of Property (ECP) Category 4. The ECP category for the specific buildings and/or parcels are as follows:

ECP Category 4: Parcel 4.12 Building 251 only

ECP Category 4: Parcel 27.2 Building 972 only

A summary of the ECP Categories for the specific building is provided in Table 1 - Identification of Property and Environmental Conditions (Enclosure 2).

3.2 Storage, Release, Treatment or Disposal of Hazardous Substances

It was determined that there is no evidence that hazardous substances were stored or disposed in Building 251. However, a one square foot floor drain was sampled and found to contain sediment with levels of concern for Lead and Poly Aromatic Hydrocarbons. In accordance with direction from the BCT, the sediment was removed from the floor drain. The floor drain was then filled with concrete.

Building 972 stored flammables, solvents, and waste oils. Known releases in this building are addressed in paragraph 3.3.1, Storage, Release, or Disposal of Petroleum or Petroleum Products.

A summary of the buildings in which hazardous substances were stored, released, or disposed in excess of 40 CFR Part 373 reportable quantities is provided in Table 2 - Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 3).

3.3 Petroleum and Petroleum Products

3.3.1 Storage, Release, or Disposal of Petroleum or Petroleum Products

It was determined that petroleum products were used in Building 251. Building 251 housed a small engine/equipment shop area and a mechanic's work pit that contained a small sump. There is no evidence of any petroleum products being released or disposed in this area. The mechanic's work pit and sump were filled with concrete prior to 1976.

It was determined that petroleum products were stored in Building 972 and releases occurred. Operational spills were cleaned when they occurred. In addition, oil stained areas were observed during a visual inspection to facilitate the Screening Sites Field Sampling Plan (CH2M Hill 1995). Building 972 has been retrofitted with the floor being cleaned and sealed with new flooring material.

A summary of the buildings or areas in which petroleum or petroleum products were stored, released, or disposed is provided in Table 3 - Notification of Petroleum Products Storage, Release, or Disposal (Enclosure 4).

3.3.2 Underground and Above-Ground Storage Tanks (UST/AST)

There was no evidence that any petroleum or petroleum products were stored in USTs/ASTs on the properties listed in this FOSL.

3.4 Polychlorinated Biphenyls (PCB) Equipment

There are no PCB containing transformers or other PCB containing equipment, except hermetically sealed fluorescent light bulb ballasts that may contain PCBs, located on the property listed in this FOSL. There is no evidence these ballasts have leaked. There is no evidence of unremediated releases of PCB equipment. The lease will include the PCB notification provision included in the Environmental Protection Provisions (Enclosure 5).

3.5 Asbestos

The EBS and the Asbestos Identification Survey (Pickering, December 1993 and January 1994) indicate asbestos containing materials (ACM) are present in Buildings 251 and 972.

Asbestos findings in Building 251 were as follows:

Boiler/flue Insulation: Material contained 35% amosite and 10% to 20% chrysotile. Material was in good condition with minimal damage due to natural deterioration and maintenance activity. Boiler/flue insulation removed in 1995.

Thermal System Pipe Insulation: Contained 35% to 40% amosite and 8% to 25% chrysotile. Material was in good condition with minimal damage due to natural deterioration and maintenance activity. Insulation removed in 1995.

Boiler Door Insulation: Contained 35% to 55% chrysotile. Material was in good condition with minor natural deterioration. Insulation removed in 1995.

Exterior Window Putty: Contained 4% to 7% chrysotile. Material was in fair to poor condition due to physical damage and natural deterioration.

9 X 9 Floor Tile: Tile and mastic in the restrooms contained 20% to 25% chrysotile. Material was non-friable and in good condition.

Roof Flashing: Material used to seal the roof perimeter and all roof penetrations contained 5% chrysotile. Material was non-friable and in good condition.

Asbestos findings in Building 972 were as follows:

12 X 12/9 X 9 Floor Tile: Two layers of asbestos containing floor tile installed in the office and break room contained 10% to 25% chrysotile. Material was in good condition.

9 X 9 Beige Vinyl Floor Tile: Vinyl floor tile installed in the office area of Bay 5 contained 30% chrysotile. Material was non-friable and in good condition.

9 X 9 Floor Tile: Vinyl floor tile and mastic installed in the office area of Bay 5 contained 25% chrysotile. Material was non-friable and in good condition.

Cement Asbestos Products: Cement asbestos board installed on the ceiling and wall area of the shop in Bay 6 contained 25% chrysotile. Material was in fair condition with moderate damage due to maintenance activity. Boards removed in 1998.

The ACM does not currently pose a threat to human health or the environment because there is no friable asbestos. The lease will include the asbestos warning and covenant included in the Environmental Protection Provisions (Enclosure 5).

3.6 Lead-Based Paint (LBP)

Based on the age of Buildings 972 and 251 (constructed prior to 1978), they are presumed to contain lead-based paint. No residential use is to be permitted under the terms of the lease. The lease shall include the lead-based paint warning and covenant included in the Environmental Protection Provisions (Enclosure 5).

3.7 Radiological Sources or Contamination

There is no evidence that the Army or DDMT used or stored radioactive sources on the property listed in this FOSL.

3.8 Radon

In keeping with DOD policy to not perform radon assessment and mitigation prior to transfer of BRAC property, there were no radon surveys conducted in the buildings in this FOSL. Radon surveys were conducted in accordance with regulations in the following residential structures at DDMT: Buildings 176, 179, 181, and 184. Radon was not detected above the Environmental Protection Agency (EPA) residential action level of 4 picocuries per liter (pCi/L) in these buildings.

3.9 Unexploded Ordnance

Based on a review of existing records and available information, none of the buildings or surrounding land proposed for lease are known to contain unexploded ordnance.

3.10 Other Hazardous Conditions

There are no other known hazardous conditions that present a threat to human health or the environment.

4. REMEDIATION

In October 1992, the U.S. EPA placed DDMT on the National Priorities List (NPL) for environmental restoration. DDMT has since entered into a Federal Facilities Agreement (FFA) with the Tennessee Department of Environment and Conservation (TDEC) and the EPA. Environmental contamination on the property does not present a hazard to leasing the property. In addition, environmental conditions on adjacent property do not present a hazard to the leasing of the property. Regulators have concurred with DDMT that the property does not pose risks above levels deemed protective provided that the property is used for the proposed purpose. No remediation is currently underway or planned. The lease will include a provision reserving the Army's right to conduct remediation activities in the Environmental Protection Provisions (Enclosure 5).

5. REGULATORY COORDINATION

TDEC and EPA Region 4 were notified of the initiation of this FOSL. Regulatory comments received during the FOSL development and the BRAC Cleanup Team meetings were reviewed and incorporated as appropriate. The FOSL was discussed with public at the January 22, 1998 Restoration Advisory Board meeting. No verbal or written comments were received from the public.

6. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE AND CONSISTENCY WITH LOCAL REUSE PLAN

The environmental impacts associated with the proposed lease of the property have been adequately analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis have been documented in the Final Environmental Assessment for Master Interim Lease, Defense Distribution Depot Memphis, Tennessee dated September 1996. The environmental effects of the activities anticipated under the proposed lease were determined not to be significant.

The proposed lease addressed by this FOSL is consistent with the reuse alternatives stated in the above referenced NEPA document and with the intended reuse of the property set forth in the Memphis Depot Redevelopment Plan dated May 1997.

7. ENVIRONMENTAL PROTECTION PROVISIONS

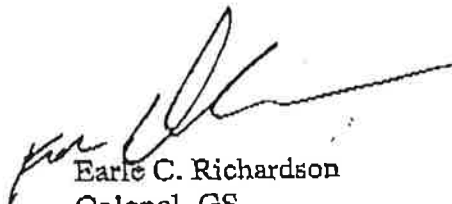
On the basis of the above results from the site-specific EBS, any subsequent or additional investigations, surveys, or studies identified in the FOSL, and in consideration of the intended use of the property, certain terms, conditions, reservations, and restrictions are required for the proposed lease. The Environmental Protection Provisions are at Enclosure 5 and will be included in the proposed lease and all subleases.

8. FINDING OF SUITABILITY TO LEASE

Based on the information detailed in the EBS, the references cited therein, and this FINDING OF SUITABILITY TO LEASE, I have concluded that all Department of Defense requirements to reach a FINDING OF SUITABILITY TO LEASE have been fully met for the subject properties. The subject property is suitable to lease by the Lessee for the intended purpose, subject to the terms, conditions, reservations, and restrictions set forth in the Environmental Protection Provision attached to this FOSL, without posing an unreasonable risk to human health or the environment and without interference with the environmental remediation process at Defense Distribution Depot Memphis, Tennessee, and the uses contemplated for the lease are consistent with protection of human health and the environment.

As required by CERCLA section 120(h)(3)(B), I have determined that the Environmental Protection Provisions of the lease and the terms of the lease provide adequate assurances that the United States will take any additional remedial action found to be necessary to protect human health and the environment with respect to any hazardous substances remaining on the property on the date of the lease which has not been taken on the date of the lease.

Notification of hazardous substance or petroleum product storage, release, treatment, or disposal on the property, Table 2 - Notification of Hazardous Substance Storage, Release, Treatment or Disposal (Enclosure 3) and Table 3 - Notification of Petroleum Products Storage, Release or Disposal (Enclosure 4) shall be provided in the lease documents, as required under the DOD FOSL Guidance.



Earle C. Richardson

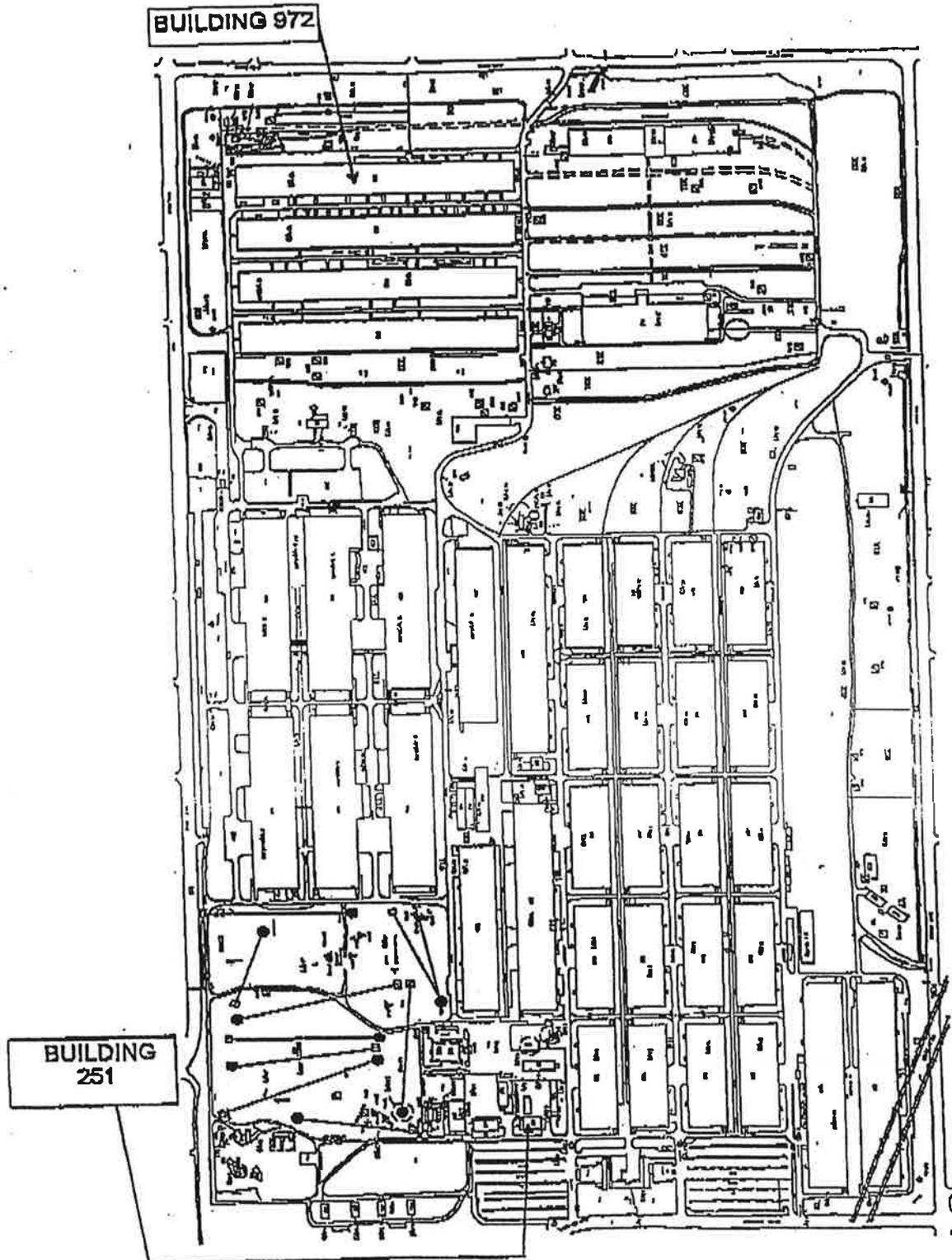
Colonel, GS

Deputy Chief of Staff for Engineering, Housing,
Environmental, and Installation Logistics

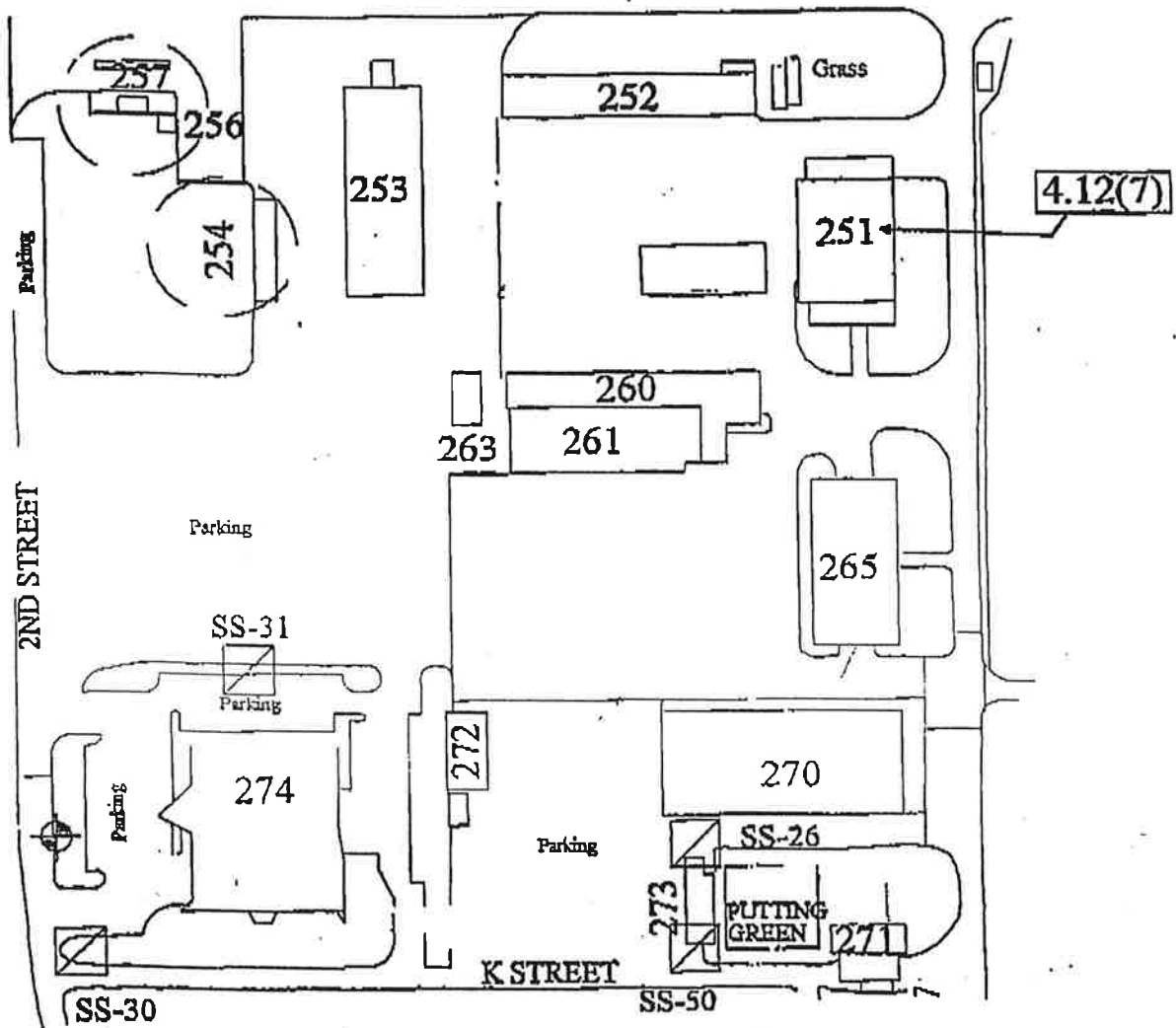
7 Enclosures

- Encl 1 Site Map of Proposed Lease Area
- Encl 2 Table 1 - Identification of Property and Environmental Condition
- Encl 3 Table 2 - Notification of Hazardous Substance Storage, Release, or Disposal
- Encl 4 Table 3 - Notification of Petroleum Product Storage, Release or Disposal
- Encl 5 Environmental Protection Provisions
- Encl 6 Regulatory/Public Comments and Responses
- Encl 7 References

Site Map of Proposed Lease Area



Site Map - Building 251



Site Map - Building 972

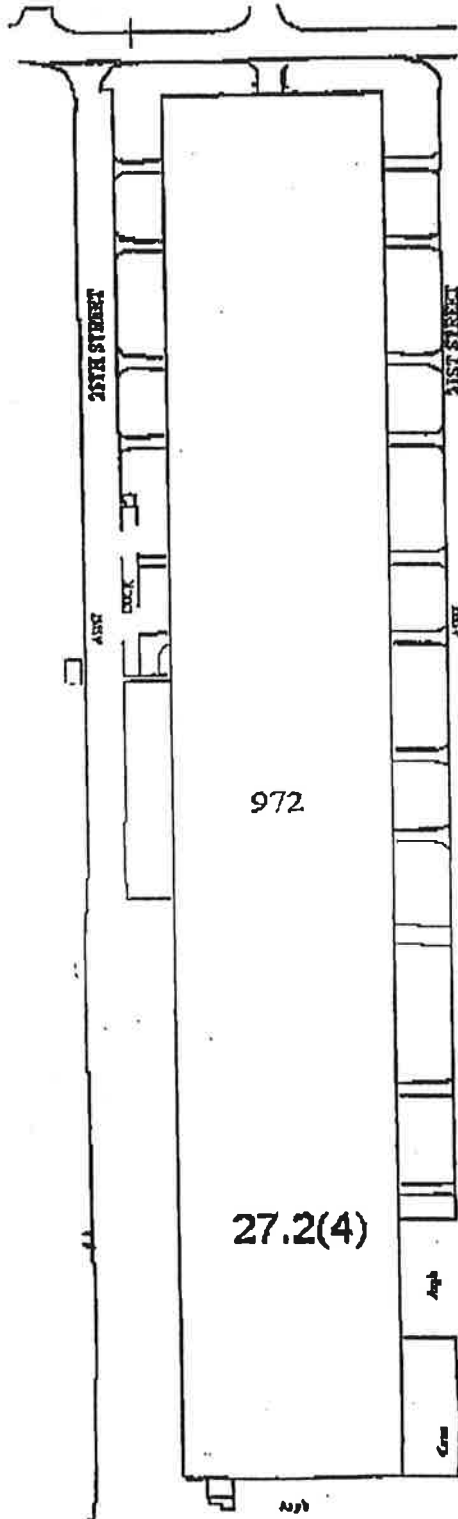


Table 1
Identification of Property and Environmental Conditions

Facility Identification and Description of Relevant Activities ^a	Corresponding EBS Identification	Environmental Condition Category Number	Environmental Condition of Property and Former, Ongoing, or Planned Remedial Action ^b
Building 251 is an 8,001 square foot building erected in 1942 and was used for storage and a small engine/equipment shop. Later use was as the post thrift shop.	Parcel 4.12	4	No documented or alleged hazardous substance or petroleum product release or disposal is known to have occurred. A one square foot floor drain was sampled and found to contain sediment with contaminants of concern for lead and PAHs. In accordance with BCT direction, the sediment was removed, and the floor drain was filled with concrete. No further action is required.
Building 972 is a 276,000 square foot building erected in 1942 as an open shed warehouse that was later enclosed. Storage/past use included flammables, solvents and waste oils. Current use is for the storage and construction of wooden packing materials.	Parcel 27.2	4	No documented or alleged hazardous substance or petroleum product release or disposal is known to have occurred. However, an unknown quantity of diesel fuel was spilled on 3/14/95. The location states the west side of building 972, and it is unknown if this spill occurred inside or outside of the building. Available records show that absorbent was applied and the product was sent to recoup for disposal. No further action is required.

Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).

Category 2: Areas where only release or disposal of petroleum products has occurred.

Category 3: Areas where release, disposal and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

Category 4: Areas where release, disposal and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

Category 5: Areas where release, disposal and/or migration of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken.

Category 6: Areas where release, disposal and/or migration of hazardous substances has occurred, but required actions have not yet been implemented.

Category 7: Areas that are not evaluated or require additional evaluation.

Table 2
Notification of Hazardous Substance Storage, Release, or Disposal*

Building Number	Name of Hazardous Substance(s)	Date of Storage, Release, or Disposal	Remedial Actions
Building 251	No record available of known storage items. Building is assumed to at one time contain products typically found in a small machine area.	It is unlikely that substances in excess of 1000 kg were stored in this building. No documented releases.	A one square foot floor drain was sampled and found to contain sediment with levels of concern for lead and PAHs. In accordance with BCT direction, the sediment was removed and the floor drain was filled with concrete. All removal actions to protect human health and the environment have been taken at this site.
Building 972	Flammables, solvents, waste oil	Known releases are of petroleum and are addressed in Table 3.	No remedial actions are required in this building.

* This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1000 kilograms or the hazardous substance's CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to 1000 kilograms or the hazardous substance's CERCLA reportable quantity. See 40 CFR Part 373.

Table 3
Notification of Petroleum Product Storage, Release, or Disposal*

Building Number	Name of Petroleum Product(s)	Date of Storage, Release, Treatment, or Disposal Activities	Remedial Actions
Building 251	No record is available of known storage items. Building is assumed to at one time contain petroleum products typically found in a small machine area (lubricant grease, gasoline, motor oil, etc.).	No documented releases.	The BCT visually inspected this building and noted no floor stains. No remedial actions are required.
Building 972	Flammables and waste oil	Oil stains were observed on the floor of the building. A release of diesel fuel occurred on 3/14/95 on the west side of Building 972. However, it is unknown if this release was inside or outside of the building.	Operational spills were cleaned as they occurred. The release of diesel fuel was cleaned with absorbent and the resulting product disposed. Building 972 has been retrofitted from an open warehouse and the floor has been cleaned and sealed with new flooring material. No further action is required.

* AMC's unofficial policy for notification includes amounts of petroleum in excess of 55 gallons either stored for greater than one year or released.

Environmental Protection Provisions

The following conditions will be placed in the lease to ensure there will be no unacceptable risk to human health or the environment and no interference with Defense Distribution Depot Memphis, Tennessee (DDMT) missions or to the DDMT Installation Restoration Program (IRP), and to ensure regulatory requirements for the IRP and other compliance programs administered by DDMT are met.

1. The sole purpose for which the leased premises and any improvements thereon may be used, in the absence of prior written approval of the Government for any other use, is for uses similar or comparable to past or current activities of the Depot such as light industry, storage or general office use.
2. 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. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection Provisions herein.
3. 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 the Lessee's or sublessee's activities on the Leased Premises. These include the DDMT NPDES and Industrial Wastewater Discharge Permits.
4. 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.
5. The Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased 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 Leased 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.

6. The Government acknowledges that Defense Distribution Depot Memphis, Tennessee has been identified as a National Priorities List (NPL) site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The Lessee acknowledges that the Government has provided it with a copy of the Defense Distribution Depot Memphis, Tennessee Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region 4, the State of Tennessee, and DDMT that became effective March 1995, and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended and the provisions of this Lease, the terms of the FFA will take precedence. The Lessee further agrees that notwithstanding any other provisions of the Lease, the Government assumes no liability to the Lessee or its sublessees or licensees should implementation of the FFA interfere with the Lessee's or any sublessee's or licensee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee, or contractor thereof, other than for abatement of rent.

7. The Government, EPA, and the Defense Distribution Depot Memphis, Tennessee and their officers, agents, employees, contractors, subcontractors, have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in these subparagraphs and for such other purposes consistent with any provision of the FFA:

(a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the Defense Distribution Depot Memphis, Tennessee Installation Restoration Program (IRP) or FFA;

(b) to inspect field activities of the Government and its contractors and subcontractors in implementing the Defense Distribution Depot Memphis, Tennessee IRP or FFA;

(c) to conduct any test or survey required by the EPA or TDEC relating to the implementation of the FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or TDEC 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 Defense Distribution Depot Memphis, Tennessee IRP or FFA, including but not limited to monitoring wells, pumping wells, and treatment facilities;

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

8. The Lessee and any sublessee shall comply with the provisions of any health and safety plan in effect under the IRP or the PFA 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 a representative or representatives designated by the Lessee and any sublessee. The Lessee and any sublessee shall have no claim on account of such entries against the United States or any office, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee and any sublessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

9. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and TDEC by certified mail a copy of the agreement or sublease of the Leased Premises (as the case may be) within fourteen (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.

10. The Lessee shall strictly comply with the hazardous waste requirements under the Resource Conservation and Recovery Act (RCRA) or its Tennessee equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense hazardous waste management facilities, complying with all 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.

11. Defense Distribution Depot Memphis, Tennessee accumulation points for hazardous and other wastes will not be used by the Lessee or any sublessee. Neither the Lessee nor the sublessee will permit its hazardous wastes to be commingled with hazardous waste of DDMT.

12. The Lessee shall prepare and maintain a Government-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such a plan shall be independent of the Defense Distribution Depot Memphis, Tennessee and shall not rely on installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of any Government officer conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs.

13. 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 that may adversely affect the Defense Distribution Depot Memphis, Tennessee environmental program, environmental cleanup, human health, or the environment, without the prior written consent of the Government. Such consent may include a 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. For construction or alterations, additions, modifications, improvements, or installations (collectively "work") in the proximity of operable units that are a part of a National Priorities List (NPL) site, such consent may include a requirement for written approval by the Government's Remedial Project Manager. 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.

14. The Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government.

15. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its state equivalent and any other applicable laws, rules or regulations. the Lessee must provide at its own expense such hazardous waste storage facilities that comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

16. LEAD-BASED PAINT WARNING AND COVENANT:

a. The Leased Premises do not contain residential dwellings and are not being leased for residential or child care purposes. The Lessee is notified that the Leased Premises contain buildings built prior to 1978 that contain lead-based paint.

b. 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 the condition of painted surfaces is contained in the Environmental Baseline Survey that has been provided to the Lessee. Additionally, the following report pertaining to lead-based paint and/or lead-based paint hazards has been provided to the Lessee: Lead Based Paint Risk Assessment for DDMT (Barge, Waggoner, Sumner, and Cannon, December 1995, revised April 1996). Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all of the information described in this subparagraph.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit use of any buildings or structures on the Leased Premises for residential habitation without first obtaining the written consent of the Government. As a condition of its consent, the Government may require the Lessee to: (i) inspect for the presence of lead-based paint and/or lead-based paint hazards in and around buildings and structures on the Leased Premises; (ii) abate and eliminate lead-based paint hazards in accordance with all applicable laws and regulations; and (iii) comply with the notice and disclosure requirements under applicable federal, state, and local laws or regulations. The Lessee agrees to be responsible for any future remediation of lead-based paint found to be necessary on the Leased Premises.

e. The Government assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Lessee, its successors or assigns, sublessees or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. The Lessee further agrees to indemnify and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. This section and the obligations of the Lessee hereunder shall survive the expiration or termination of this Lease and any conveyance of the Leased Premises to the Lessee. The Lessee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

17. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT:

a. The Lessee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials ("ACM") has been found on the Leased Premises, as described in the final base-wide EBS. The ACM on the Leased Premises does not currently pose a threat to human health or the environment.

b. The Lessee covenants and agrees that its use and occupancy of the Leased Premises will be in compliance with all applicable laws relating to asbestos; and that the Government assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Leased Premises described in this Lease, whether the Lessee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Lessee agrees to be responsible for any future remediation of asbestos found to be necessary on the Leased Premises.

18. NOTICE OF POLYCHLORINATED BIPHENYL (PCBs) EQUIPMENT AND COVENANT:

a. The Lessee is hereby informed and does acknowledge that equipment containing polychlorinated biphenyls (PCBs) did exist on the Property as described in the final base wide Environmental Baseline Survey (EBS). All PCB containing equipment, except fluorescent light bulb ballasts that possibly contain PCBs, has been properly removed in accordance with applicable laws and regulations.

b. The Lessee covenants and agrees that any possession, use and management of any PCB containing equipment will be in compliance with all applicable laws relating to PCBs and PCB containing equipment, and that the Government assumes no liability for the remediation of PCB contamination or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees or to any other person, including members of the general public, arising from or incident to use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB containing equipment, whether the Lessee, its successors or assigns have properly warned or failed to properly warn the individual(s) insured. The Lessee agrees to be responsible for any remediation of PCBs or PCB containing equipment found to be necessary from its use or possession during the term of the Lease. This section and the obligations of the Lessee hereunder shall survive the expiration or termination of this lease and any conveyance of the Leased Premises to the Lessee.

19. The Lessee shall not use the Leased Premises for the storage or disposal of non-Department of Defense owned hazardous or toxic materials, as defined in 10 U.S.C. 2692, unless authorized under 10 U.S.C. 2692 and properly approved by the Government.

20. The Government may impose any additional environmental protection conditions and restrictions during the terms of this lease that it deems necessary by providing written notice of such conditions or restrictions to the Lessee.

Regulatory/Public Comments and Responses

Please find the Environmental Protection Agency (EPA), Tennessee Department of Environment and Conservation (TDEC), Army Materiel Command (AMC), and Defense Logistics Agency (DLA) comments and Memphis Depot Caretaker (MDC) responses for FOSL # 3.

EPA comments to FOSL # 3.

1. Please note that regulatory agencies should be notified at the initiation of the FOSL. The process of development of the FOSL will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available. Regulatory comments received during the development of the FOSL will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as enclosures to the FOSL.
2. As required by CERCLA Section 120(h) (5), DoD shall notify the state prior to entering into any lease that will encumber the property beyond the date of termination of DOD's operations. The notification shall include the length of lease, the name of lessee, and a description of the uses that will be allowed under the lease of the property. At National Priority List sites, DoD shall provide this notification to the United States Environmental protection Agency as well.

COMMENTS NOTED: The MDC will provide EPA and TDEC workable drafts of FOSLs as soon as they are available.

3. Section 1. Purpose. The section should identify the leased properties as Parcel 4.12 (Bldg. 251) and Parcel 27.2 (Bldg. 972). Please note that the term "expected reuse" is too vague and ambiguous. The section should define clearly the intended use of the leased property.

COMMENT INCORPORATED.

3. Section 2. Property Description. Is Building 972 an open shed or a closed shed? Please note that Table 1 describes Building 972 as a closed shed.

COMMENT INCORPORATED. Building 972 was constructed as an open shed warehouse then later enclosed. Tables 1 & 2 will be changed to refer to Building 972 as an open and then enclosed shed.

4. Section 3. Environmental Condition of the Property. The section should identify the updated BRAC Cleanup Plan (1997) as a reference used for this document.

COMMENT INCORPORATED. The Draft Final BRAC Cleanup Plan Version 2 dated November 1997 will be added to this section.

5. Section 3.1 Environmental Condition of Properties Categories. The section should define Category 4 as areas where release, disposal, and/or migration of hazardous substances has occurred, and all remedial actions necessary to protect human health and the environment have been taken. Please change the title of Table 1 to Identification of Property and Environmental Conditions.

COMMENT INCORPORATED. The title of Table 1 will be changed to "Identification of Property and Environmental Conditions." Also, Army guidance does not call for a description of specific ECP categories in this section. However, ECP categories shall be listed at the bottom of Table 1.

6. Section 3.3.2 Underground Above-Ground Storage Tanks (UST/AST). The last sentence should be deleted.

CONCUR. Section 3.3.2 will be changed to read "There was no evidence that any petroleum or petroleum products were stored in USTs/ASTs on the properties listed in this FOSL.

7. Section 3.6 Lead-Based Paint (LBP). The current condition of the buildings should be described in this section.

NON CONCUR. Conditions can change from the time a FOSL is written and signed until a lease is prepared and signed. It is incumbent on the government to provide all available lead-based paint information regarding properties, but it is incumbent on the potential lessee to verify the condition at the time of lease. Guidance does not call for a description of the property but rather dictates that the government provide the lessee notification of possible presence of lead-based paint. The Master Interim Lease as well as Environmental Protection Provisions (Enclosure 5) provide the lessee an opportunity to inspect the properties.

8. Section 3.9 Radon. The section should only refer to the leased buildings. The radon survey conducted at residential buildings is irrelevant information.

NON CONCUR. Higher headquarters decided to include the housing information to let the reader know the Army was aware of radon requirements and had not inadvertently failed to address this issue.

9. Section 4. Remediation. The section should include any remedial action(s) conducted at the leased buildings. The section contains information that is irrelevant and therefore should be deleted.

References

I. The statutory and regulatory requirements relating to FOST/FOSLs are as follows:

CERCLA §120(h), 42 U.S.C. §9620(h) - Property Transferred by Federal Agencies

10 U.S.C. § 2667(f) as amended by section 2906 of the FY 94 Defense Authorization Act requiring DOD and EPA to consult on FOSL procedures

40 CFR PART 373 - Reporting Hazardous Substance Activity when Selling or Transferring Federal Real Property.

II. The DOD Guidance relating to FOST/FOSLs is as follows:

DOD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where Release or Disposal has Occurred, dated 1 June 1994.

DOD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where No Release or Disposal has Occurred, dated 1 June 1994.

DOD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease (FOSL), dated 18 May 1996.

DOD Fast Track to FOST - A Guide to Determining if Property is Environmentally Suitable to Transfer, July 1997

DOD Fact Sheet - A Field Guide to FOSL, Fall 1996

DOD Memorandum, Subject: Clarification of "Uncontaminated" Environmental Condition of Property at Base Realignment and Closure (BRAC) Installations, dated 21 October 1996

DOD Memorandum, Subject: Asbestos, Lead paint and Radon Policies at BRAC Properties, dated 31 October 1994

III. U.S. Environmental Protection Agency (EPA) Guidance

Guidance for Evaluation of Federal Agency Demonstrations that Remedial Actions are Operating Properly and Successfully Under CERCLA Section 120(h)(3), (Interim), dated August 1996

EPA Memorandum, Subject: Military Base Closures: Guidance on EPA concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 120(h)(4).

re-issued March 27, 1997

IV. Department of the Army Guidance

AR 200-1, Environmental Protection and Enhancement, dated 21 February 1997

DAIM-BO Memorandum, Subject: Clarification of Meaning of Uncontaminated Property for Purposes of Transfer by the United States, dated 9 December 1996

V. WWW BRAC Sites

1. DOD Sites -

DOD Base Closure and Transition Office -

<http://emissary.acq.osd.mil/bctoweb/bctohome.nsf>

DOD Environmental Base Realignment and Base Closure (BRAC) Program

<http://www.dtic.mil/envirodod/envbrac.html>

DOD Base Closure and Community Reinvestment

<http://www.acq.osd.mil/iai/bccr.htm> DOD Office of Economic Adjustment

<http://www.acq.osd.mil/oea/index.html>

2. Environmental Protection Agency EPA OSWER Federal Facilities Base Realignment and Closure

<http://www.epa.gov/swerffrr/brac.htm>

3. Department of the Army Base Realignment and Closure Office

<http://www.hqda.army.mil/acsimweb/brac/brac3.htm>

CERL BRAC/NEPA "How To" Manual

<http://www.cecer.army.mil/facts/sheets/PL19.html>

Corps of Engineers Base Realignment and Closure (Camp Bonneville)

- Good Slide Presentation

<http://www.nps.usace.army.mil/geotech/bnvl/brac95/index.htm>

Presidio of San Francisco BRAC Environmental Restoration Program
- General information as well as facts on Presidio Cleanup and Conversion

<http://www.presidiosanfran.com>

4. Department of the Air Force Air Force Base Conversion Agency

<http://www.afbca.hq.af.mil>

5. Department of the Navy

NAVY NAVFAC Base Closure Site

<http://164.224.238.53:81/csohome.nsf>

Navy Facilities Engineering Command - information on Navy BRAC sites

http://www.ncts.navy.mil/homepages/navfac_cs/bcp.htm

Navy Environmental BRAC News

<http://www.navy.mil/homepages/navfac/env/newslet.html>