

Administrative

**FINDING OF SUITABILITY
TO TRANSFER
(FOST)**

**Building 69, Fire Station
Fort McClellan, Calhoun County, Alabama**

July 29, 1999

Attachments

Attachment 1 - Site Map of Building 69, Fire Station

Attachment 2 - Environmental Protection Provisions

Attachment 3 – Regulatory Comments

FINDING OF SUITABILITY TO TRANSFER
Building 69, Fire Station, Part of Parcel 161(1)
Fort McClellan, Calhoun County, Alabama
June 1999

1.0 PURPOSE

The purpose of this Finding Of Suitability to Transfer (FOST) is to document the environmental suitability of Building 69, Fire Station, Fort McClellan, Alabama, for transfer to the City of Anniston for continued use as a fire station consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense policy. In addition, the FOST identifies use restrictions as specified in the attached Environmental Protection Provisions necessary to protect human health or the environment after such transfer.

2.0 PROPERTY DESCRIPTION

The proposed property to be transferred consists of 0.49 acres with one building, Building 69 located at 69 Headquarters Road. The building was constructed in 1936 as a fire station and guardhouse for the installation. The building is currently still being used as a fire station. The two story, cross shaped building measures 39 feet by 80 feet on the main section. The wings measure 12 feet by 34 feet and 30 feet by 52 feet. The first floor consists of the garage area for the fire engines, kitchen, closet and hose tower area. The rear portion of the building is a single story and originally contained the cells for the guardhouse. The cells have been removed and the area is currently used as a work space. The second floor consists of the sleeping area and closets.

All activities including refueling and maintenance of fire engines for Building 69 are conducted off-site. Underground storage tanks or above ground storage tanks are not present on the property. A site map of the property is attached (Figure 1).

3.0 ENVIRONMENTAL CONDITION OF THE PROPERTY

A determination of the environmental condition of the property was made based on the review of existing environmental documents, aerial photographs, recorded chain of title documents, completing associated visual inspection of the site and the properties immediately adjacent to Building 69, and conducting personnel interviews with previous and current employees of the fire station. Documents reviewed included the Final Environmental Baseline Survey (EBS) and Community Environmental Response

Facilitation Act (CERFA) Letter Report (January, 1998), U. S. EPA Region IV and the Alabama Department of Environmental Management's (ADEM) concurrence to the CERFA Report. Asbestos Containing Material Survey Report (1998), the Disposal and Reuse Environmental Impact Statement (August 1998), Radon Monitoring Report (December 1998), the FMC Archive Search Report (1998), and Lead-Based Paint Risk Assessment Report (1995).

3.1 Environmental Condition of Property Category

The Department of Defense (DOD) Environmental Condition of Property (ECP) Category for Building 69 is ECP Category 1 [Portion of Parcel 161(1)]; An area where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas). Adjoining properties including the library, housing identification section, officer's quarters and the post field house are all Category 1 areas; portions of parcel 161(1) (Figure 1).

3.2 Storage, Release, or Disposal of Hazardous Substances

Based on a review of existing records and available information, there is no evidence that hazardous substances were stored, released, or disposed on the property in excess of the reportable quantities listed in 40 CFR Part 373. Accordingly, there is no need for any notification of hazardous substance storage, release, or disposal.

3.3 Petroleum and Petroleum Products

3.3.1 Storage, Release, or Disposal of Petroleum Products

Based on a review of existing records and available information, there is no evidence that any petroleum or petroleum products in excess of 55 gallons at one time were stored, released, or disposed of on the property. Accordingly, there is no need for any notification of petroleum product storage, release, or disposal.

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

Based on a review of existing records and available information, there is no evidence that petroleum products were stored in underground or above-ground storage tanks on the property.

3.4 Polychlorinated Biphenyls (PCB) Equipment

Based on a review of existing records and available information, there are no PCB containing transformers located on the property. Some fluorescent light ballasts may contain PCBs in excess of 50 ppm which are subject to TSCA requirements. There is no evidence of unremediated releases from PCB equipment. The deed will include the

fluorescent light ballasts PCB warning and covenant provided in the Environmental Protection Provisions (Attachment 2).

3.5 Asbestos

Based on the 1998 Asbestos Containing Material Survey Report (1998), Building 69 contains friable and non-friable asbestos. Friable asbestos includes 1) a hand-formed, asbestos containing insulation compound applied to the fittings of the heating water pipe in the boiler room and above the drop ceiling of the kitchen area, 2) insulation found on the hot water tank located in the boiler room, and 3) insulation found on some of the piping straight runs associated with the boiler and hot water tank located in the boiler room. Non friable presumed asbestos is found in 12 x 12-inch vinyl floor tile located in various offices and rooms on the first floor of the building. Both friable and non-friable asbestos was found to be in good condition. The ACM does not currently pose a threat to human health or the environment. The deed will contain the asbestos warning and covenant included in the Environmental Protection Provisions (Attachment 2).

3.6 Lead-Based Paint (LBP)

Building 69 was constructed in 1936. Based on the age of the building (constructed prior to 1978), the building is presumed to contain lead-based paint. The interior and exterior of the building were repainted last in 1998 and 1996, respectively, the paint is in very good condition. The deed will include the lead-based paint warning and covenant provided in the Environmental Protection Provisions (Attachment 2).

3.7 Radiological Materials

Based on a review of existing records and available information, there is no evidence that the radioactive material or sources were used or stored on the property.

3.8 Radon

Radon surveys were conducted at the installation; however, Radon was not detected at above the EPA residential action level of 4 picocuries per liter (pCi/L) in Building 69 (Radon Monitoring Report, 1998).

3.9 Unexploded Ordnance

Based on a review of existing records and available information, Building 69, the surrounding land proposed for transfer and adjacent areas are not known to contain unexploded ordnance.

3.10 Other Hazardous Conditions

There are no other hazardous conditions that required remediation or a response action for the property to be suitable for transfer for the intended use.

4.0 REMEDIATION

There are no environmental remediation orders or agreements applicable to the property. In addition, environmental conditions on adjacent property do not present a hazard to the transferring of the property.

5.0 HISTORICAL PROPERTIES

Building 69 is a historic building located in the Post Headquarters Historic District and is eligible for inclusion in the National Register of Historic Places as documented in the Fort McClellan Historic Buildings Inventory dated June 1993. The deed will include the preservation covenant provided in the Environmental Protection Provisions (Attachment 2).

6.0 REGULATORY/PUBLIC COORDINATION

The U.S. EPA Region IV, ADEM, and the public were notified of the initiation of the FOST. Regulatory/public comments received during the FOST development have been reviewed and incorporated or attached as appropriate. A copy of the regulatory comments has been attached to the FOST.

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

The environmental impacts associated with proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis have been documented in the Final Environmental Impact Statement for the Disposal and Reuse of Fort McClellan, Alabama (1998) and its associated Record of Decision, 25 June 1999. In addition, the proposed transfer is consistent with the intended reuse of the property as set forth in the Fort McClellan Comprehensive Reuse Plan adopted by the Anniston-Calhoun County Fort McClellan Development Joint Powers Authority.

8.0 ENVIRONMENTAL PROTECTION PROVISIONS

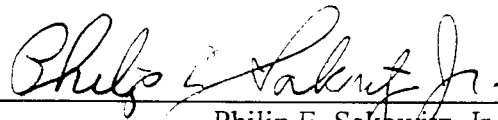
On the basis of the above results from the EBS and other environmental studies and in consideration of the intended use of the property, certain terms and conditions are

required for the proposed transfer. These terms and conditions are set forth in the attached Environmental Protection Provisions and will be included in the deed (Attachment 2).

9.0 FINDINGS OF SUITABILITY TO TRANSFER

Based on the information above, I conclude that the Property qualifies as CERCLA §120(h)(4) uncontaminated property, is transferable under that section, and that all Department of Defense requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions in the attached Environmental Protection Provision (Attachment 2). In addition, the deed for this transaction will contain the following provisions:

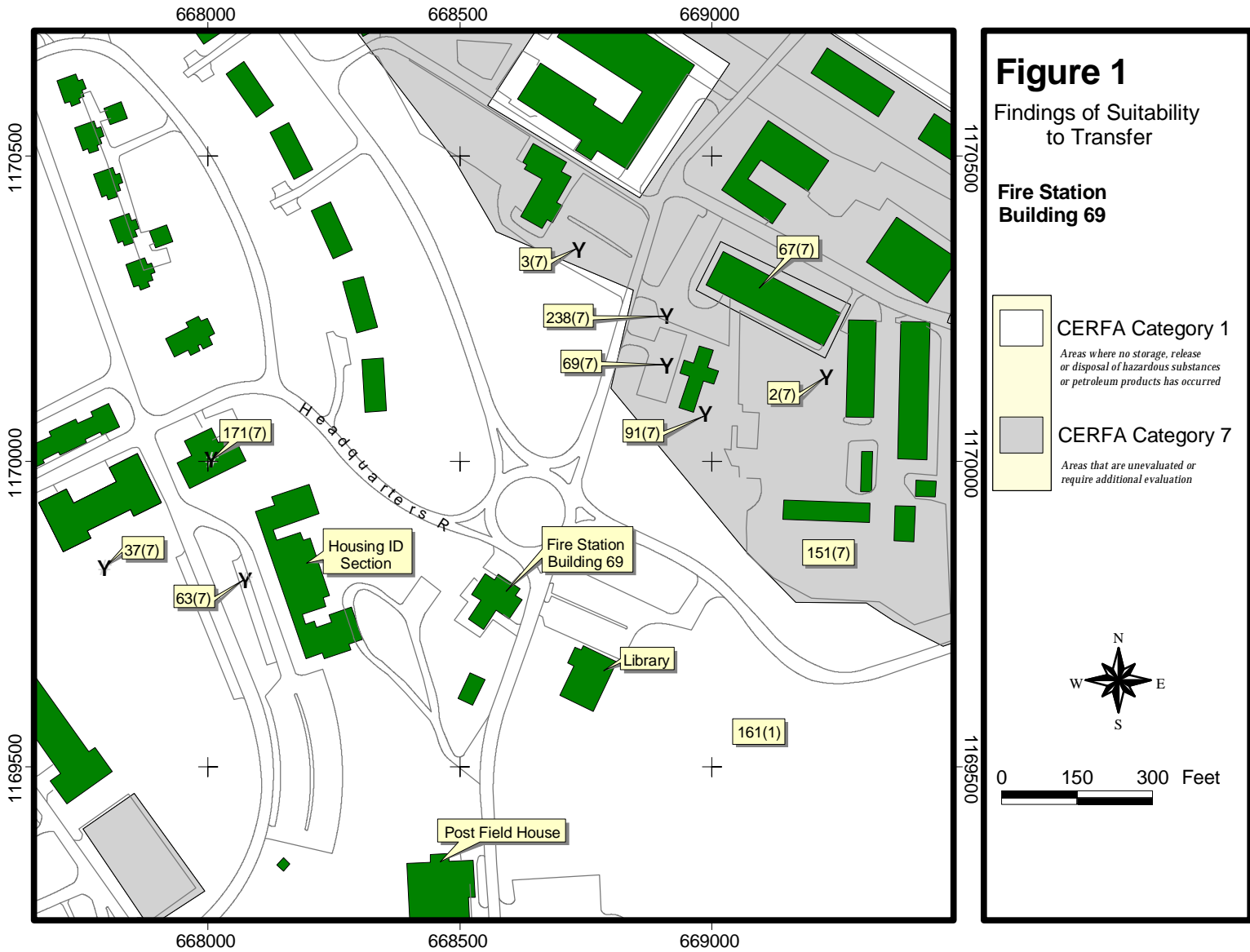
- The covenant under CERCLA §120(h)(4)(D)(i) warranting that any response action or corrective action found to be necessary after the date of transfer shall be conducted by the United States.
- A clause as required by CERCLA §120(h)(4)(D)(ii) granting the United States access to the property in any case in which a response action or correction action is found to be necessary after the date of transfer for the Property, or such access is necessary to carry out a response action or corrective action on adjoining property.



Philip E. Sakowitz, Jr.
Deputy Chief of Staff for Base Operations Support
Headquarters United States Army Training and Doctrine Command

ATTACHMENT 1

SITE MAP OF BUILDING 69, FIRE STATION



ATTACHMENT 2

ENVIRONMENTAL PROTECTION PROVISIONS

ATTACHMENT 2

ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications are included in the deed to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at Fort McClellan.

INCLUSION OF PROVISIONS: The person or entity to whom the property is transferred shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

ACCESS CLAUSE:

The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the grantee, to enter upon the Premises in any case in which a response action or corrective action is found to be necessary after the date of transfer of the property or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, to the following purposes enumerated in this subparagraph:

- a) Conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testing-pitting, test soil borings and other activities;
- b) To conduct any test or survey of environmental conditions at the transferred Premises or to verify any data submitted to the EPA or appropriate Alabama agency by the Government relating to such conditions;
- c) To construct, operate, maintain or undertake any other response or remedial actions as required or necessary, including, but not limited to monitoring wells, pumping wells and treatment facilities.

NO LIABILITY FOR NON-ARMY CONTAMINATION: The Army shall not incur liability for response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the property is transferred, or other non-Army entities, is identified as the party responsible for contamination of the property.

A RIGHT OF THE ENFORCEMENT OF THE DEED PROVISION: The restrictions and covenants are binding on the Grantee, its successors and assigns; shall run with the land; are forever enforceable; shall benefit the public in general and the territory surrounding the Property, including lands retained by the United States; and shall further the common environmental objectives of the United States and the State of Alabama; and, therefore, are enforceable by the United States Government and the State of Alabama.

NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT:

1. The GRANTEE is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing materials (“ACM”) has been found on the Property, as described in the ACM survey report. The ACM on the property does not currently pose a threat to human health or the environment.
2. The GRANTEE covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Army assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the GRANTEE, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The GRANTEE agrees to be responsible for any future remediation of asbestos found to be necessary on the Property.
3. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.
4. The Grantee acknowledges that it has inspected the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the property, including, without limitation, any asbestos hazards or concerns.
5. No warranties, either express or implied, are given with regard to the condition of the property, including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the GRANTEE to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand against the United States.

LEAD-BASED PAINT WARNING AND COVENANT:

- (1) The Property does not contain structures or buildings suitable for residential dwellings. The GRANTEE, and its successors and assigns, is hereby informed and does acknowledge that Building 69, which was constructed prior to 1978, is

presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory.

- (2) 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, which has been provided to the GRANTEE. Additionally, the Finding of Suitability to Transfer (FOST) has been provided to the GRANTEE. The GRANTEE has been provided with a copy of the federally approved pamphlet on lead poisoning prevention. The GRANTEE hereby acknowledges receipt of all of the information described in this paragraph.
- (3) A risk assessment or inspection by the GRANTEE, its successors and assigns, for possible lead-based paint hazards is recommended prior to the transfer of the Property. The GRANTEE, its successors and assigns, acknowledge that they have received the opportunity to conduct a risk assessment of inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of the transfer.
- (4) The GRANTEE, its successors and assigns, shall comply with all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. The GRANTEE shall not permit use of Building 69 for residential habitation without: (i) inspecting for the presence of lead-based paint and/or lead-based paint hazards; (ii) abating and eliminating lead-based hazards as required by and in accordance with all applicable laws and regulations; and (iii) complying with the notice and disclosure requirements under applicable Federal and state law. The GRANTEE agrees to be responsible for any future remediation of lead-based paint found to be necessary on the Property.
- (5) The Army assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the GRANTEE, its successors and 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 Property containing lead-based paint. The GRANTEE, its successors and assigns, further agrees to indemnify and hold harmless the Army, 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 Property containing lead-based paint. The obligation of the GRANTEE, its successors and

assigns, shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

PRESERVATION COVENANT:

1. In consideration of the conveyance of certain real property hereinafter referred to as Building 69, located in the Calhoun County, Alabama, the Grantee hereby covenants on behalf of itself, its heirs, successors, and assigns at all times to the Alabama State Historic Preservation Officer to preserve and maintain Building 69/Post Headquarters Area in accordance with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service 1992), in order to preserve and enhance those qualities that make Building 69 eligible for inclusion in the National Register of Historic Places. In addition, any design review guidelines established by a Preservation Commission with appropriate authority will be followed. If the Grantee desires to deviate from these maintenance standards, the Grantee will notify and consult with the Alabama State Historic Preservation Officer in accordance with paragraphs 2, 3, and 4 of this covenant.
2. The Grantee will notify the Alabama State Historic Preservation Officer in writing prior to undertaking any construction, alteration, remodeling, demolition, or other modification to structures or setting. Such notice shall describe in reasonable detail the proposed undertaking and its expected effect on the integrity or appearance of Building 69. Demolition of interior retrofit of noncontributing buildings and structures can be undertaken after thirty (30) days of written notice to the Alabama State Historical Preservation Officer without further consultation.
3. Within thirty (30) calendar days of the Alabama State Historic Preservation Officer's receipt of notification provided by the Grantee pursuant to paragraph 2 of this covenant, the Alabama State Historic Preservation Officer will respond to the Grantee in writing as follows:
 - (a) That the Grantee may proceed with the proposed undertaking without further consultation; or
 - (b) That the Grantee must initiate and complete consultation with the Alabama State Historic Preservation Office before it can proceed with the proposed undertaking.

If the Alabama State Historic Preservation Officer fails to respond to the Grantee's written notice, as described in paragraph 2, within thirty (30) calendar days of the Alabama State Historic Preservation Officer's receipt of the same, then the Grantee may proceed with the proposed undertaking without further consultation with the Alabama State Historic Preservation Officer.

4. If the response provided to the Grantee by the Alabama State Historic Preservation Officer pursuant to paragraph 3 of this covenant requires consultation with the Alabama State Historic preservation Officer, then both parties will so consult in good faith to arrive at mutually-agreeable and appropriate measures that the Grantee will implement to mitigate any adverse effects associated with the proposed undertaking. If the parties are unable to arrive at such mutually-agreeable mitigation measures, then the Grantee shall, at a minimum, undertake recordation for the concerned property -- in accordance with the Secretary of Interior's standards for recordation, and any applicable state standards for recordation, or in accordance with such other standards to which the parties may mutually agree -- prior to proceeding with the proposed undertaking. Pursuant to this covenant, any mitigation measures to which the Grantee and the Alabama State Historic Preservation Office mutually agree, or any recordation that may be required, shall be carried out solely at the expense of the Grantee.
5. Alabama State historic Preservation Office shall be permitted upon reasonable notice at a reasonable time to inspect Building 69 in order to ascertain its condition and to fulfill its responsibilities hereunder.
6. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the Alabama State Historic Preservation Officer may, following reasonable notice to the Grantee, institute suit to enjoin said violation or to require the restoration of Building 69. The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney fees.
7. In the event that Building 69 (i) is substantially destroyed by fire or other casualty, or (ii) is not totally destroyed by fire or other casualty, but damage thereto is so serious that restoration would be financially impractical in the reasonable judgement of the Owner, this covenant shall terminate on the date of such destruction or casualty. Upon such termination, the Owner shall deliver a duly executed and acknowledged notice of such termination to the Alabama State Historic Preservation Officer and record a duplicate original of said notice in the Calhoun County Deed Records. Such notice shall be conclusive evidence in favor of every person dealing with Building 69 as to the facts set forth therein.
8. The Grantee agrees that the Alabama State Historic Preservation Officer may at his/her discretion, without prior notice to the Grantee, convey and assign all or part of its rights and responsibilities contained herein to a third party.
9. This covenant is binding on the Grantee, its heirs, successors, and assigns in perpetuity, unless explicitly waived by the Alabama State Historic Preservation Officer. Restrictions, stipulations, and covenants contained herein shall be inserted by the Grantee verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in Building 69 or any part thereof.

10. The failure of the Alabama State Historic Preservation Officer to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

11. The Covenant shall be a binding servitude upon Building 69 and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that the Grantee agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.

ATTACHMENT 3

**REGULATORY COMMENTS
TO
FINDING OF SUITABILITY TO TRANSFER
FIRE STATION BUILDING 69**

**RESPONSE TO COMMENTS
FINDING OF SUITABILITY TO TRANSFER
FIRE STATION BUILDING 69**

**Fort McClellan
Calhoun County, Alabama**

August 10, 1999

RESPONSE TO COMMENTS
BY UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IV
DRAFT FINDING OF SUITABILITY TO TRANSFER
FIRE STATION BUILDING 69
FORT MCCLELLAN, ALABAMA

Comment 1: **Section 2.0 Property Description.** This section describes the property to be transferred as one building. Please clarify whether the land surrounding the building, including land allowing ingress and egress to the building, is proposed to be transferred.

Response: The land allowing ingress and egress to the building is included in the land proposed to be transferred. Approximately 0.49 acres of land, including land on which the building is constructed, is proposed for transfer.

Comment 2: **Section 3.0 Environmental Condition of the Property.** CERCLA §120(h)(4) recites certain sources to be consulted in the identification of uncontaminated property. This section states that aerial photographs were consulted. The language from CERCLA specifies that aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies should be consulted. Please clarify whether the aerial photographs contained information relevant to prior uses of the property.

Response: As stated in the text all available aerial photographs (aerial photographs dating from 1949 to 1987 (EPIC Report, 1990) were reviewed for the property. The building proposed for transfer was constructed in 1936 as a Fire station and has been used as a Fire Station to this day.

Comment 3: **Section 3.0 Environmental Condition of the Property.** CERCLA §120(h)(4) requires a physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property. CERCLA differentiates between the physical inspection requirement above, and a visual inspection of the property and immediately adjacent properties.¹ The FOST omitted a reference to such physical inspection of adjacent property. DoD policy,² defines "adjacent" as "either those properties contiguous to the boundaries of the property being surveyed or other properties." Please clarify whether the physical inspection of so-defined adjacent property was performed.

Response: Section 3.1 states "adjoining properties including the library, housing identification section, officer's quarters and the post field house are all Category 1 areas: portions of Parcel 161(1)". Physical inspection of the adjacent properties was conducted in the determination of the environmental condition of property

¹ Section 3.0 of the FOST indicates that a visual inspection of the property and immediately adjacent properties was conducted.

² DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Uncontaminated Property dated October 15, 1993.

for adjacent properties, and DOD Guidance on the Environmental Review Process to Reach Finding of Suitability to Transfer properties was followed.

Comment 4: Section 3.0 Environmental Condition of the Property. CERCLA §120(h)(4) also requires review of:

Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

The FOST omits a statement regarding this requirement. Please clarify whether this statutory requirement was satisfied.

Response: The FOST in Section 3.1 states "adjoining properties including the library, housing identification section, officer's quarters and the post field house are all Category 1 areas; portions of Parcel 161(1)". The FOST in this section clearly states that a Category 1 area is an area where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).

Comment 5: Section 3.9 Unexploded Ordnance. The Army Material Command FOST/FOSL Guidance, dated February 1998, speaks in terms of land "containing or suspected to contain" unexploded ordnance (UXO). The FOST states, "Based on a review of existing records and available information, Building 69 or the surrounding land proposed for transfer are not known to contain unexploded ordnance." Please comment on whether the Army intended to distinguish between "not known" and "suspected" and whether UXO is or is not suspected on the property.

In addition, EPA requests that the Army describe the property's proximity to potential unexploded ordnance (UXO) or ordnance and explosive (OE) containing property, with particular reference to adjacent property. Both CERCLA and Army Guidance state that adjacent property should be addressed. "For example, if there is UXO or environmental contamination on adjacent property, the FOST/FOSL should explain the safety and/or educational measures or other protective measures needed to protect the public, and impose any appropriate deed restrictions or lease conditions."³

Response: Building 69 and adjoining areas are Category 1 areas, based on all available information, the building and adjacent properties are not known to contain or suspected to contain UXO.

Comment 6 : Attachment 2, Environmental Protection Provisions. The Access intended to effect the access requirements of CERCLA §120(h)(4)(D)(ii). The clause included in Attachment 2 may inappropriately limit this access requirement by enumerating the purposes for which the Government and its officers, agents, employees, contractors, and subcontractors have the right to enter

³ Army Material Command FOST/FOSL Guidance, February 1998, Section 4.0 Remediation.

the property. EPA recommends changing the opening sentence of the Access Clause to read:

The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice, to enter upon the Premises in any case in which a response action or corrective action is found to be necessary after the date of transfer of the property or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purposes:

In addition, please revise clauses a) through d) of the Access Clause, removing the reference to the Fort McClellan Base Closure and Realignment (BRAC) Program. This limitation may be relevant to leases for property, however, should not include such a limitation. The BRAC program, per se, will likely no longer be an extant entity at the times that such access may be required. Specifically, clause a) should be revised, deleting "related to the Fort McClellan Base Closure and Realignment (BRAC) Program." Clause c) should be revised, deleting "relating to the implementation of the BRAC program or" and inserting "of". Clause d) should be revised, deleting "under the Fort McClellan BRAC,". Clause b) should probably be deleted in its entirety as it appears to envision the Government and its contractors and subcontractors already on the property.

Response: The text will be revised to reflect the comment.

Comment 7: Attachment 2, Environmental Protection Provisions. A clause should be added to Attachment 2, providing for a deed provision that creates a right of enforcement of the deed provisions in both the United States and the State of Alabama. The following language is modified from the Army Material Guidance:

These restrictions and covenants are binding on the Grantee, its successors and assigns; shall run with the land; are forever enforceable; shall benefit the public in general and the territory surrounding the Property, including lands retained by the United States; and shall further the common environmental objectives of the United States and the State of Alabama; and, therefore, are enforceable by the United States government and the State of Alabama.

Response: The text will be revised to reflect the comment.

Comment 8: The 'Environmental Restoration Defense,' provision in the Department of Defense Appropriations Act of 1993 (H.R. 5504, 102d Cong.) provides that if DoD transfers or leases real property to a state or the political subdivision of a state, the U. S. shall hold harmless, defend and indemnify the State or political from all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgements awards and costs and expenses arising out of, or in any manner predicated upon, the presence, release or threatened release of any hazardous substance,

pollutant or contaminant resulting from DoD activities, including the activities or any lessee, licensee or other person on the property during any time the property was under DoD control. Please indicate in the FOST the applicability of this provision.

Response: The FOST addresses this provision under Notice of the Presence of Asbestos and Covenant, Paragraph No. 2 and under Lead-Based Paint Warning and Covenant, Paragraph No.5.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4



61 Forsyth Street
Atlanta, Georgia 30303-3104

09/24/99

Mr. Ron Levy
Director of Environment
USACMLS & MPCENS & FM
Building 141A
13th Avenue
Fort McClellan, Alabama 36205-5000

RE: EPA Comments on Fire Station 69 FOST

Dear Mr. Levy,

This reply is informed by the Alabama Department of Environmental Management concurrence in the transfer of the Fire Station, Building 69, to the City of Anniston. Having reviewed the Army's response, the Army has satisfactorily incorporated our comments and, with the exception of our Comment 8, there are no issues that warrant a negative comment from EPA on the proposed transfer.

In keeping with the spirit of our recent discussions, EPA trusts that the exclusion of the original comment is unintentional, and upon Army internal discussions the comment will be viewed as constructive and beneficial for the Army in this transfer. Therefore, please include the suggested language and forward the final documents to EPA for inclusion in our internal files. No additional drafts or reviews are needed, unless the suggested language is viewed as problematic. Therefore, upon your review of this comment and subsequent inclusion of the suggested language, please consider this letter a concurrence letter for the proposed Army action and expect no additional correspondence on this matter from this office.

EPA Comment 8

The 'Environmental Restoration, Defense,' provision in the Department of Defense Appropriations Act of 1993 (H.R. 5504, 102d Cong.) provides that if DoD transfers or leases real property to a state or the political subdivision of a state, the U.S. shall hold harmless, defend and indemnify the State or political subdivision from all claims, demands, losses, damages, liens, liabilities, injuries deaths, penalties, fines, lawsuits and other proceedings, judgements awards and costs and expenses arising out of, or in any manner predicated upon, the presence, release or threatened release of any hazardous

substance, pollutant or contaminant resulting from DoD activities, including the activities of any lessee, licensee or other person on the property during any time that the property was under DoD control. Please indicate in the FOST the applicability of this provision.

Army Response

The FOST addresses this provision under Notice of the Presence of Asbestos and Covenant, Paragraph No. 2 and under Lead-Based Paint Warning and Covenant, Paragraph No. 5.

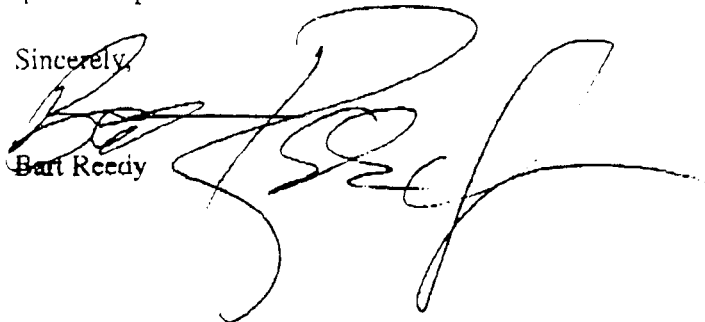
EPA Reply

The purpose of the indemnification provision of Section 330 of Public Law 102-484 is to indemnify a transferee who is a State or a political subdivision of a State in the event of a claim arising out of, or in any manner predicated upon, the presence, release or threatened release of any hazardous substance, pollutant or contaminant resulting from DoD activities. The provisions under the asbestos and lead-based paint covenants serve a different purpose altogether. While Section 330 indemnifies the State as described above, the asbestos and lead-based paint covenants serve to notify the Grantee that the Army retains no liability with regard to asbestos or lead-based paint remediation or damages arising out of exposure to those substances and, in fact, in the case of lead-based paint, indemnifies the Army against any claims arising out of the possession or use of any portion of the property containing lead-based paint. Please include the indemnification provisions of Section 330 of Public Law 102-484, as described in our original comment.

In advance, thank you for your cooperation and I look forward to your favorable review as indicated by inclusion of the above suggestion in the final documents. Should you have any questions please contact me at 404-562-8541.

Sincerely,

Bart Reedy



Army Response to EPA's Comment 8

"It is inappropriate for the Army to include PL 102-484 Section 330 indemnification language in the FOST. The primary purpose of the FOST is to document the environmental condition of the property and certify that the property is suitable for transfer based on the environmental restrictions that will be incorporated in the real estate documents. Furthermore, absent actual indemnification language being included in the FOST, as a matter of law, the Army has an obligation to meet its requirements under Section 330 of P.L. 102-484. Therefore, the Army will place PL 102-484 Section 330 indemnification language in the Deed, as the appropriate place to notice a legal right or responsibility afforded to the transferee."

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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MONTGOMERY, ALABAMA 36130-1463

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JAMES W. WARR
DIRECTOR

DON SIEGELMAN
GOVERNOR

July 23, 1999

Facsimiles: (334)
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Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Education/Outreach: 213-4399

Headquarters, US Army Training and Doctrine Command
Deputy Chief of Staff for Base Operations
Attention: Mr. Philip E. Sakowitz
Fort Monroe, VA 23651-5000

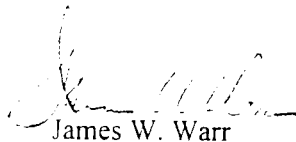
RE: ADEM's Review of the Draft Finding of Suitability to Transfer for Building 69, Fire Station, Part of Parcel 161(1), Fort McClellan, Calhoun County, Alabama

Dear Mr. Sakowitz:

The Alabama Department of Environmental Management has received and reviewed the Draft Finding of Suitability to Transfer (FOST) for Building 69, Fire Station, dated June 1999. Based on our review, the Department concurs with the Army that the subject property is suitable for transfer to the City of Anniston.

For any questions or concerns regarding this matter please contact Mr. Chris Johnson at (334) 271-7789 or electronically at clj@adem.state.al.us.

Sincerely,



James W. Warr
Director

JWW/cj

cc: Mr. Ron Levy, US Army-FTMC
Mr. Bart Reedy, EPA Region 4

