

## ARMY RESPONSE TO PUBLIC COMMENTS

The Army received comments from 12 individuals and three (3) organizations responding to the public notice of the Finding of Suitability for Early Transfer (FOSET). These comments are attached. The addresses and phone numbers for individuals were removed for privacy reasons. The addresses and phone numbers for organizations were not removed.

1. Several of the letters have similar comments and are summarized as follows:

a. Comment 1: Why is the developer (Sunflower Redevelopment LLC) cleaning up the explosive hazards rather than the Army as originally planned? Will the developer have the same legal obligations and restrictions with regard to the clean up of explosive hazards as the Army? Will the protections for public safety in place for a federal entity (such as the Army) also be part of the arrangement for the developer's clean up? The FOSET does not adequately address these concerns nor answer these questions.

***Response 1: The Army is contracting with the developer to perform the explosive decontamination of Sunflower Army Ammunition Plant (SFAAP). This will enhance redevelopment of the property by centralizing the environmental remediation, munitions response, and property redevelopment operations. More importantly, the privatization of the Sunflower munitions response will be fully protective of public safety and the environment. The developer will be subject to the same Explosive Safety Submission (ESS) and ESS Amendment requirements that the Army would follow in performing the Sunflower munitions response. The Sunflower ESS and ESS Amendment are required to be approved by the Department of Defense Explosive Safety Board (DDESB). The DDESB is responsible for providing objective advice to the DoD and the Military Services on matters concerning explosives safety and to prevent hazardous conditions to life and property on and off DoD installations from the explosives and environmental effects of DoD munitions. Finally, the Army will provide oversight and final approval of any explosive decontamination work to ensure that the work is performed in accordance with the ESS and ESS Amendment.***

b. Comment 2: Will the RAB (Restoration Advisory Board) continue in the same capacity with the same members after the FOSET? The Army has provided funding for the continuation of the RAB but there is no requirement that the new owner continue the RAB. The RAB has been functioning for years in the public interest relating to the clean up of Sunflower. If there is no requirement that the new owner/developer continue the existing RAB, public input and oversight of the clean up could be seriously jeopardized. The FOSET does not adequately address these concerns.

***Response 2: The developer has agreed with KDHE on the need for a periodic organized forum for public input into the process of finishing the clean up at the former Sunflower Army Ammunition Plant. As part of the Consent Order, the developer will continue the existing RAB. In addition, the developer intends to maintain the RAB funding at the Army's historical level. The developer has notified the SFAAP RAB members of this intention. Finally, the Consent Order states that KDHE will prepare and conduct public meetings concerning Corrective Actions being conducted at Sunflower.***

c. Comment 3: The Johnson County Comprehensive Land Use Plan (also known as the Community in a Park Plan), which was approved on July 23, 1998, is specifically identified for the intended reuse of the SFAAP land. This plan has a number of flaws and is no longer viable given the location of landfills on the site and the nature of the contamination and clean up contemplated. It is widely recognized as being obsolete. It has also not been brought to a public hearing since 1998. Will a public hearing on the land use plan occur before the FOSET is finalized? If not, when will the public

have an opportunity to discuss the future land use issues for SFAAP? When will a new development plan be created and by whom will it be created? What involvement will the newly established Sunflower Redevelopment Authority have in the land use issues? These questions and concerns have not been adequately addressed and answered in the FOSET.

***Response 3: The Comprehensive Land Use Plan for Sunflower is the responsibility of Johnson County. The Johnson County Commissioners' goal is to have a Redevelopment Authority established by May 2005. The Redevelopment Authority will oversee redevelopment of the SFAAP property. In addition, the Johnson County planning staff extensively reviewed the Land Use Plan in the December 2003 and recommended that no major changes were necessary and that the essential elements of the plan were reaffirmed and still applicable. It is the Army's understanding that the Land Use Plan will likely be reviewed by the Johnson County Planning Commission and the Sunflower Community Redevelopment Authority in the next year. It is expected that this review will include a public hearing process. Any questions concerning activation of the Redevelopment Authority should be addressed to the Board of County Commissioners of Johnson County, Kansas.***

d. Comment 4: Since many of the land use issues are involved in contracts with KU, K-State, JCPRD, and De Soto, shouldn't public comments on the land use be requested before the contracts are signed? The process should be transparent to all decision makers and the public and not negotiated secretly. The FOSET does not allow for such public comment before it is too late.

***Response 4: The Sunflower Transfer Legislation authorizes the Army to transfer Sunflower directly to an entity selected by Johnson County. The Johnson County Commissioners selected the developer (Sunflower Redevelopment LLC) as the entity to acquire Sunflower. As part of the Sunflower property transfer, the Government is requiring the developer to give approximately 2,577 acres for public use by the University of Kansas, Kansas State University, Unified School District 232, Johnson County Parks and the City of DeSoto. The amount and location of these transfers will be negotiated between the developer and each recipient. Any questions concerning public input regarding these transfers should be addressed to the developer or the property recipient.***

e. Comment 5: Asbestos is a serious concern for the residents in the surrounding communities. Asbestos flakes have been found on residents' properties after buildings were burnt on SFAAP. On page six of the Final FOSET, there is the following statement: "Any asbestos containing material (e.g. tansite siding and roofing felt) will be removed from the buildings/structures to the extent practicable prior to thermal decomposition." The disclaimer "to the extent practicable" is a very serious concern and must be removed from the statement because it allows the burning of asbestos when the developer determines that it is not practicable to remove the asbestos by other means. The burning of asbestos puts the surrounding neighbors in danger of asbestos contamination by airborne asbestos flakes. How does the FOSET assure that the public will be protected in this regard?

***Response 5: The Army believes that virtually all of the ACM will be removed from the buildings prior to conducting burning operations. However, it is possible that the condition of the building or level of explosive contamination in a particular building or buildings may pose an unacceptable safety risk to workers. The FOSET was revised to indicate that if the developer determines that removal of the asbestos poses an unacceptable explosive safety risk or the building lacks structural integrity or constitutes a safety risk to workers, the developer may thermally decontaminate the structure without removing the ACM in accordance with applicable laws (including any required KDHE approvals).***

f. Comment 6: The Governor stated that a significant amount of land (at least 2000 to 3000 acres) must be devoted to a Research Park area. Why haven't 2000 to 3000 acres for a Research Park been included as part of the land use plan?

***Response 6: Governor Sebelius has requested property for a research park as the condition of approving the early transfer of SFAAP. The developer is working with the Governor's representatives on the amount of property to be dedicated to this use and its location on SFAAP. An agreement will be reached by the parties before the property transfers.***

2. The following comments were provided by the Shawnee Tribe's legal counsel:

a. Comment 1: It is the Tribe's position that the Governor should reject this FOSET, and refuse to permit the proposed early transfer of the Sunflower Property, based on the Tribe's claims to the Property as presented in its litigation currently before the United States Court of Appeals for the Tenth Circuit and due to continuing environmental concerns:

***Response 1: Due to the ongoing litigation, it would be inappropriate at this time for the Army to respond to this comment. It should be noted, however, that the United States District Court for the District of Kansas did rule against the claim of the Shawnee tribe, and that is the decision now on appeal. Any early transfer will be consistent with the then applicable decision of the courts.***

b. Comment 2: The Tribe believes that serious environmental contamination concerns remains on the Sunflower property that should mandate that the Governor deny the Army's requested early transfer.

***Response 2: There are significant environment remediation and munitions response requirements associated with the Sunflower property. However, as explained in the FOSET, these requirements are being addressed as part of the Sunflower property transfer. Specifically, the developer will assume responsibility for conducting environmental remediation and conducting munitions response actions on Sunflower. The environmental remediation will be conducted in accordance with the KDHE Consent Order. The munitions response will be conducted in accordance with the DDESB approved ESS and ESS Amendment. In addition, the property will be subject to environmental remediation and explosive safety deed restrictions to ensure protection of human health and the environment pending completion of the Sunflower remediation program. The Army/Developer contract will include a requirement for the developer to obtain environmental insurance to ensure that all environmental and explosive hazards are properly remediated.***

c. Comment 3: A number of extremely hazardous substances remain on the Sunflower property, including 44 miles of asbestos.

***Response 3: As stated in the FOSET Section 7.6, the remediation of approximately 40 miles of asbestos insulated above ground steam lines and the soil under the lines was completed in December 2004.***

3. The following comments were provided by a local property owner:

Comment 1: Contaminated groundwater is flowing south off of SFAAP. Why hasn't the Army investigated the groundwater off plant south of 143<sup>rd</sup> Street?

***Response 1: The Army has been investigating the SFAAP groundwater since 1985. This investigation has included a comprehensive study to determine the geology, hydrogeology, and groundwater quality***

*at SFAAP. As a result of this investigation, the Army has determined that the groundwater at the southern end of SFAAP flows in a northerly direction to the Kansas River. The groundwater study included a row of groundwater monitoring wells that were placed approximately 1000 feet from the southern boundary of SFAAP. Groundwater samples from these wells did not show contamination in levels requiring remediation. Based on the SFAAP groundwater investigation, the Army, EPA Region VII, and KDHE have determined that contaminated groundwater water is not flowing south off of SFAAP. As part of the SFAAP property transfer, the developer will be continuing the SFAAP soil and groundwater investigation. If this future investigation determines that contaminated groundwater is flowing in a southerly direction at SFAAP, appropriate remedial actions will be taken.*

Comment 2: Large quantities of Lead and Nitroguanidine were buried in the magazine area of SFAAP. The buried Lead and Nitroguanidine are causing groundwater contamination in the magazine area.

*Response 2: It was standard practice that when the Lead which lined the walls and floors of propellant production buildings was removed, the Lead was explosively decontaminated and sold to metal recyclers since the Lead had value. The magazines on the south end of SFAAP did not have Lead lined walls or floors. Investigations have not indicated any large quantities of buried Lead. It was standard practice that any waste explosives, such as Nitroguanidine, were open burned. It is highly unlikely that the Army would allow Nitroguanidine to be buried on plant as it would pose a safety hazard to personnel working in that area. There have been prior investigations of the magazine area at SFAAP (SWMU 15 & 16). Results from those investigations did not indicate that there was buried Lead or Nitroguanidine. There will be an additional investigation of SWMUs 15 & 16, and AOC 10. If the results of the investigation find contamination above risk levels then a cleanup will be done under direction from KDHE.*

Comment 3: There is an easement owned by the Army restricting the construction on private property located near SFAAP. In the past, there was discussion that this easement would be removed when the SFAAP property was transferred.

*Response 3: Certain easements held by the United States on the southern border of the plant, the United States, for valuable consideration, acquired certain perpetual and assignable easements that forbid any human habitation on said lands but allows for the use of such lands by the Landowner for other non-habitation purposes. These easements were not tied to a particular federal mission nor did they contain any other termination clause. Under the federal Property Act, GSA is required to sell off and assign any easements that no longer have a federal purpose and that have value. It is only in the case of a "no fair market value" determination that GSA has the discretion to release an easement .*

*In the current case, GSA has appraised these easements and has concluded that the easements have a fair market value. As such, GSA is under requirement pursuant to its regulations to attempt to sell the easement interests under those sales methods authorized under the Property Act. The Property Act is found at 40 U.S.C. 550; et.seq. GSA property management regulations are found at 41 C.F.R. Part 102-75.*

Comment 4: In 1998, an organization interested in acquiring Sunflower stated that it had paid two millions dollars in lobbying money to obtain Sunflower. How much of that money was contributed to the Army, EPA, or GSA?

*Response 4: The Army, EPA, and GSA do not have information regarding lobby efforts by the previous organization interested in acquiring Sunflower. If there were lobbying efforts by the previous organization, the Army, EPA, and GSA did not receive any money related to these efforts.*

4. One individual's comment was to "Please return the Sunflower land to the public for park or other public use. It will be a great additions to the Kansas prairie lands".

***Response: The Johnson County Parks and Recreation District (JCPRD) has requested a portion of Sunflower to be used as a public park. The amount and location of the property that will be used for park purposes will be negotiated by the developer and JCPRD. Any questions concerning the establishment of the public park should be addressed to the JCPRD.***

5. The following comment was provided by a local property owner:

Comment 1: Will the Army still monitor the clean-up to assure toxic materials are not released into the air, the nearby streams, or for that matter left in the ground to cause problems years down the road? Or a State or County agency with the authority to shut down the clean up until it's done properly.

***Response 1: As noted in FOSET Section 5.0, the Sunflower remediation will be performed in accordance with applicable federal and state laws and will be subject to oversight by KDHE. In addition, the Army will monitor the Sunflower remediation to ensure compliance with the Army/Developer Contract.***