

08-3936

STATE OF NEBRASKA  
HOWARD COUNTY  
FILED FOR RECORD  
MO. Oct. DAY 27 2008  
AT 9:00 O'CLOCK A M. RECORDED  
IN BOOK 08 OF RECORD PAGE 3936  
Marge Palmberg COUNTY CLERK  
BY BJS

Lease No. DTFASW-09-L-00015  
(OBH) VORTAC Restrictive Aerial Easement  
Wolbach, Nebraska

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PAID 75.50  
FEE BOOK ✓

LEASE

Between

THE UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

and

REED J. ANDERSON and STEPHANIE ANDERSON  
Husband and Wife

THIS LEASE is hereby entered into by REED J. ANDERSON and STEPHANIE ANDERSON, husband and wife, whose address is 1223 ELM STREET, SAINT PAUL, NEBRASKA 68873 hereinafter referred to as the Lessor and the UNITED STATES OF AMERICA, hereinafter referred to as the Government. This lease shall be effective when it is fully executed by all parties. The terms and provisions of this lease, and the conditions herein, bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. PREMISES:

The Lessor hereby leases to the Government the following described property, hereinafter referred to as the premises, VIZ:

VERY HIGH FREQUENCY OMNIDIRECTIONAL RANGE TACTICAL AIR  
NAVIGATIONAL (VORTAC)  
RESTRICTIVE AERIAL EASEMENT

A parcel of land located in the East ½ of the NW ¼ of Section 9, T-16-N, R-9-W, 6<sup>th</sup> P.M., Howard County, Nebraska, and more particularly describes as follows:

That portion of the West ½ of said Section 9 which is within a radius of 1,000 feet of a transmitter building, located on adjacent property, the center of said building being 1.427

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feet South and 44 feet East of the NE corner of the NW ¼ of said Section 9, consisting of approximately 26 acres as more particularly described on Drawing No. 3-D-4875, revised February 03, 2000, and identified as Exhibit "A", attached hereto and made a part hereof.

A. Together with a right-of-way for ingress to and egress from the premises; a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the Lessor, and unless herein described otherwise, to be by routes reasonably determined to be the most convenient to the Government.

B. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of Government facilities.

C. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government.

2. TERM:

To have and to hold, for the term commencing on October 1, 2008, and continuing through September 30, 2018, inclusive, PROVIDED, that adequate appropriations are available from year to year for the payment of rentals.

3. CONSIDERATION:

(Aug-02)

The Government shall pay the Lessor rental for the premises in the amount of \$600.00 per year during the lease period. Payments shall be made in arrears at the end of each fiscal year without the submission of invoices or vouchers. The payments shall be made to: Reed J. Anderson and Stephanie Anderson, husband and wife, and sent to: 1223 ELM STREET, SAINT PAUL, NE 68873, or directly deposited in accordance with the Electronic Funds Transfer (EFT) Payment clause in this lease. Payments shall be considered paid on the day a check is dated or an electronic funds transfer is made.

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4. PAYMENT BY ELECTRONIC FUND TRANSFER:

(Oct-06)

(a) Method of payment:

1. All payments by the Government under this contract will be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) or (a)(3) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer. Payment information transfer refers to the payment information normally sent with a payment to assist the contractor in associating the payment to specific contracts.
2. In the event the Government is unable to release one or more payments by EFT, the Lessor agrees to either;
  - a. Accept payment by check or
  - b. Request the Government to extend the payment due date until time as the Government can make payment by EFT (but see paragraph (d) of this clause).
3. In the event that the Lessor is granted a waiver from EFT under the exceptions as provided for in FAA AMS Section T3.3.1.A-7, the Government payments will be made by check. A waiver from EFT is permanent, and the Lessor must register for EFT when the circumstances that justified the waiver change.

(b) Lessor's EFT information: The Government will make payment to the Lessor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Lessor will be responsible for providing the updated information to the CCR database (Reference Clause, "Central Contractor Registration-Real Property"). If the Lessor is granted an exemption from CCR, the Lessor will follow the requirements of alternate clause "Contractor Payment Information - Non-CCR".

(c) Mechanisms for EFT Payment: The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) Suspension of Payment: If the Lessor's EFT information in the CCR database is incorrect, then the Government is not required to make payments to the Lessor under this contract until correct EFT information is entered into the CCR database, and any invoice or contract financing request submitted during this period of noncompliance will be deemed not a proper invoice for the purpose of prompt payment under this contract. In such instances, the late interest payment

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terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for incomplete or erroneous transfers:

1. If an incomplete or erroneous transfer occurs because the Government used the Lessor's EFT information incorrectly, the Government remains responsible for:
  - (i) Making a correct payment;
  - (ii) Paying any late payment penalty due; and
  - (iii) Recovering any erroneously directed funds.
2. If an incomplete or erroneous transfer occurs because the Lessor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and
  - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Lessor is responsible for recovery of any erroneously directed funds; or
  - (ii) If the funds remain under the control of the payment office, the Government will make payments under the provisions of paragraph (d) "Suspension of Payment".

(f) EFT and payment terms: A payment will be deemed to have been made in a timely manner in accordance with the payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the payment due date, provided the specific payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims: If the Lessor assigns the proceeds of this contract, as provided for in the assignment of claims terms of this contract, the Lessor will require that the assignee register separately in the CCR database and that the assignee agree that payments will be made by EFT in accordance with the terms of this clause. The requirements of this clause will apply to the assignee as if it were the Lessor. EFT information that shows the ultimate recipient of the transfer to be other than the Lessor or the CCR registered assignee is incorrect EFT information within the meaning of paragraph (d) "Suspension of Payment" clause.

(h) EFT and change of Name or Ownership Changes: If the Lessor transfers ownership of the property under lease or changes its business name, it will follow the requirement of section (g) of clause, "Central Contractor Registration - Real Property".

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(i) Liability for change of EFT information by financial agent: The Government is not liable for errors resulting from changes to EFT information made by the Lessor's financial agent.

(j) Payment information: The accounting office will forward to the Lessor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Lessor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. The Lessor can obtain detailed payment information by registering for the US Treasury PAID system. This can be done on the Internet by logging onto the website: <https://fmsapps.treas.gov/paid/>. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government will mail the payment information to the remittance address contained in the contract and CCR database.

5. CONTRACTOR PAYMENT INFORMATION-NON CCR:

(Oct-0)

The Central Contractor Registration system is the FAA's required method to receive vendor information. However, Lessor has been granted an exception to CCR and therefore must provide initial payment information and any future changes to payment information to the Real Estate Contracting Officer on a completed and signed "Vendor Miscellaneous Payment Information" form, together with any other required notice under this contract.

The Lessor is responsible to maintain correct payment information with the FAA, and for any liability that may result from the Government's reliance on incomplete or inaccurate information provided by the Lessor. Failure to provide accurate information or adequate notice of changes to vendor payment information can result in a determination of "incorrect information" as defined in paragraph (d), "Suspension of Payment" of clause "Electronic Fund Transfer (EFT) Payment."

6. INTEREST FOR LATE PAYMENTS:

(Oct-16)

An interest penalty will be paid by the Government, if payment is not made within 30 days of the due date.

Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified. Rent shall be paid in arrears and will be due on September 30 of each government fiscal year.

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The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. Interest penalties of less than \$1.00 shall not be paid.

Interest penalties will not be paid on delays due to disagreement between the Government and Lessor over the payment amount, requests for additional information or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract.

7. CANCELLATION:

The Government may terminate this lease, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate by delivering to the Lessor a written notice specifying the effective date of the termination. The termination notice shall be delivered by registered mail, return receipt requested and mailed at least 30 days before the effective termination date.

8. RESTRICTIONS:

This lease provides for a restricted clear zone area in, on, over, and across the land described below as "restricted area" and consisting of the right to prohibit all obstructions above ground surface at the base of the tower within a 1,000-foot radius from the center of the facility, together with the right to trim, cut, fell, and remove therefrom trees, underbrush, obstructions, and other vegetation, structures, or obstacles that abridge the rights hereby leased; subject, however, to the rights of the landowner, its heirs and assigns to use the land for the type and height of the exceptions permitted beyond the various radii as described on (Exhibit "B", 2 pages) "VORTAC SITING CRITERIA/VORTAC CLEAR-ZONE CRITERIA", attached hereto and made a part hereof. All height limitations of the exceptions being above the ground surface elevation at the base of the facility proper, and further subject to existing structures in place under existing easements for public roads and highways, public utilities, railroads, and pipelines, and any present or future use by landowner, its heirs and assigns, which does not interfere with or abridge the restrictive rights hereby leased.

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9. NON-RESTORATION:

It is hereby agreed between the parties, that upon termination of its occupancy, (due to termination or expiration of the lease), the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property which is the subject matter of this lease. It is further agreed the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor. Notice of abandonment will be conveyed by the Government to the Lessor in writing.

10. CONTRACT DISPUTES:

All contract disputes and arising under or related to this lease contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A Lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

All Contract Disputes shall be in writing and shall be filed at the following address: Office of Dispute Resolution for Acquisition, AGC-70, Federal Aviation Administration, 800 Independence Ave., S.W., Room 323, Washington, DC 20591. Telephone: (202) 267-3290, Facsimile: (202) 267-3720;

A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the lease contract claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA.

The full text of the Contract Disputes clause is incorporated by reference. The full text can be found via Internet at Contract Dispute Full Clause.

11. OFFICIALS NOT TO BENEFIT:

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

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12. COVENANT AGAINST CONTINGENT FEES:

The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this lease upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability or, in its discretion, to deduct from the lease consideration, or otherwise recover the full amount of the contingent fee.

13. QUIET ENJOYMENT:

The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

14. HOLDOVER:

If after the expiration of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect on a month-to-month basis. Rent shall be paid in accordance with the terms of the lease, in arrears on a prorated basis, at the rate paid during the lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee or vacated the leased premises.

15. ANTI-KICKBACK:

The Anti-Kickback Act of 1986 (41 U.S.C. *et seq.*) prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the lease price charged by a Lessor to the United States or in the lease price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

16. ASSIGNMENT OF CLAIMS:

Pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. 3727, the Lessor may assign their rights to be paid under this lease.

17. NOTIFICATION OF CHANGE OF LAND TITLE:

If the Lessor sells or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting said demised premises, they shall immediately



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notify the Government, in writing, of any such transfer or conveyance affecting the demised premises within 30 calendar days after completion of the "change in property rights." Concurrent with the written notification, the Lessor shall provide the Government copies of the legal document(s) (acceptable to local authorities) for transferring and or conveying the property rights.

18. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT:

The FAA agrees, in consideration of the warranties herein expressed, that this lease is subject and subordinate to any and all recorded deeds of trust, mortgages, and other security instruments now or hereafter imposed upon the premises, so long as such subordination shall not interfere with any right of the Government under this lease. It is mutually agreed that this subordination shall be self-operative and that no further instrument shall be required to effect said subordination.

In the event of any sale of the premises, or any portion thereof, or any such transfer of ownership, by foreclosure of the lien of any such security instrument, or deed provided in lieu of foreclosure, the FAA will be deemed to have attorned to any purchaser, successor, assigns, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the Lessor under this lease, establishing direct privity of estate and contract between the Government and said purchasers/transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided that such transferees shall promptly provide, following such sale or transfer, appropriate documentation deemed necessary by the RECO, and shall promptly execute any instrument, or other writings, as shall be deemed necessary to document the change in ownership.

19. EXAMINATION OF RECORDS:

The Comptroller General of the United States, the Administrator of the FAA or a duly authorized representative of either shall, until three years after final payment under this contract have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.

20. LEASE SUCCESSION:

This lease succeeds Lease DTFA09-88-A-10097 and all other previous agreements between the parties for the leased property described in this document.

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21. NOTICES:


All notices/correspondence shall be in writing, reference the lease number, and be addressed as follows:

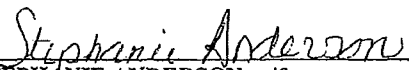
TO LESSOR: Reed J. and Stephanie Anderson  
1223 Elm Street  
Saint Paul, Nebraska 68873

TO GOVERNMENT: Department of Transportation  
Federal Aviation Administration  
Real Estate and Utilities Group, ASW-53  
Fort Worth, TX 76193

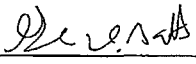
Lease No. DTFASW-09-L-00015  
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IN WITNESS WHEREOF, the parties have signed their names:

 DATE: 5-9-08  
REED J. ANDERSON, husband

 DATE: 5-9-08  
STEPHANIE ANDERSON, wife

THE UNITED STATE OF AMERICA

BY:  DATE: 6-24-08  
GLEN D. BATTS  
TITLE: CONTRACTING OFFICER

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CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEBRASKA

COUNTY OF HOWARD

On this, the 9 day of May, Two Thousand Eight, before me, \_\_\_\_\_

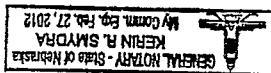
Kerin R Smydra a Notary Public in and for the

County of Howard, State of Nebraska, duly commissioned and qualified, personally appeared

Reed J. Anderson, Stephanie Anderson known to me

to be the persons described in and whose names are subscribed to the attached instrument, and  
acknowledged to me that they executed the instrument for the purposes and consideration therein  
stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office  
the day and year in this certificate first written above.



Kerin R Smydra  
Notary Public in and for the

COUNTY OF HOWARD

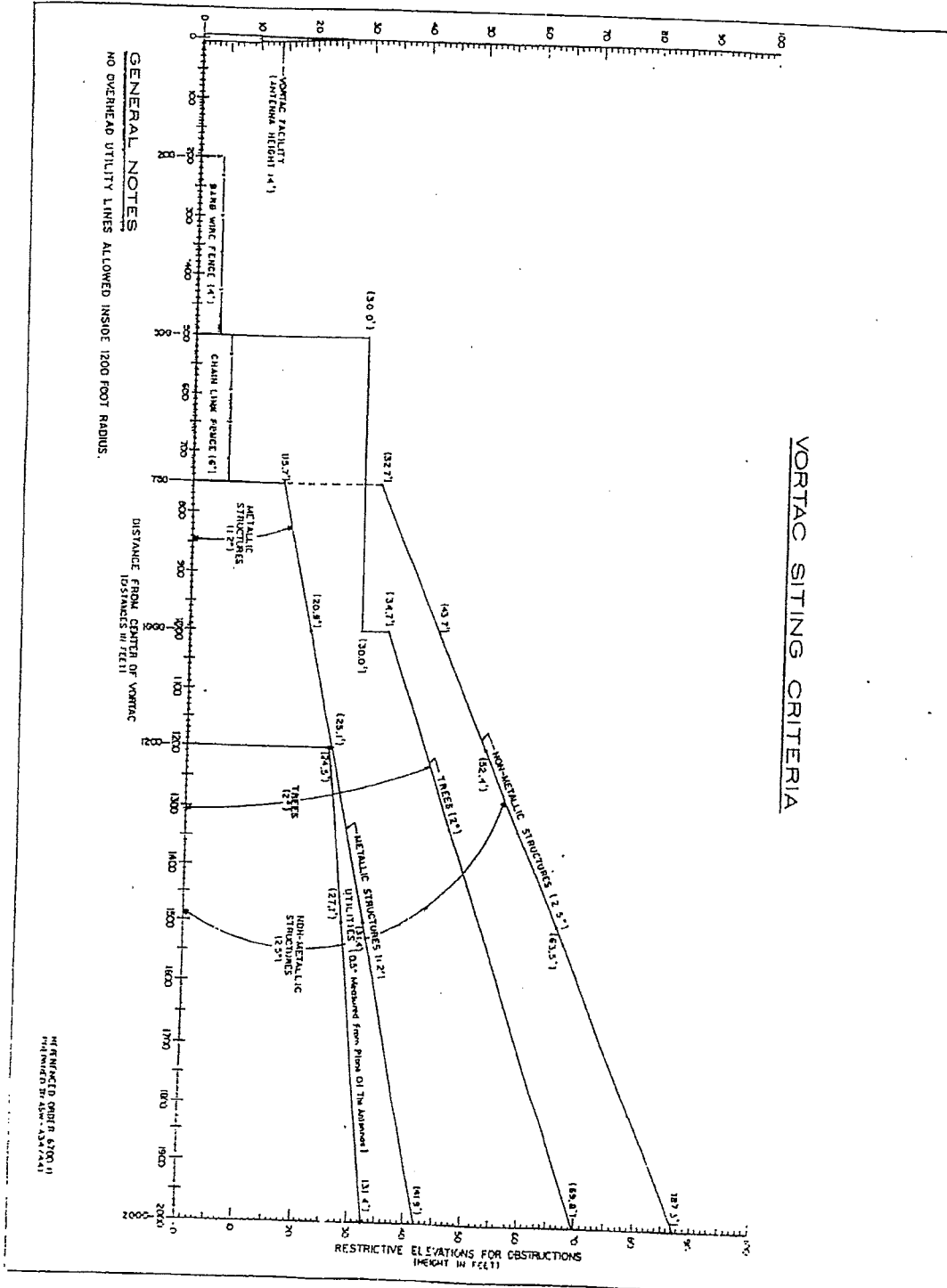
STATE OF NEBRASKA

My Commission Expires:

Feb 27, 2012



# VORTAC SITING CRITERIA



## VOR CLEAR-ZONE CRITERIA

1. **General.** All clear-zones are assumed to be 1000 feet in radius or more. In some special cases they may be smaller. Any purchase/lease of a clear-zone less than 1000 foot in radius should be coordinated with the Central Service Area, Engineering Services, Operations Engineering, Enroute Nav aids Engineer.
2. **Obstructions.** All obstructions within 1000 feet of the facility are to be removed except as noted in the following guidelines. Normal crop raising and grazing operations may be permitted in this area, except at mountain top facilities where antennas are only 4 feet above grade.
3. **Trees and Woods.** Single trees of moderate height (up to 30 feet) may be tolerated beyond 500 feet. No groups of trees should be within the 1000 feet radius or subtend a vertical angle of more than 2 degrees. No trees should be within 1000 feet at a mountain top site.
4. **Fences.** Farm type wire fences four feet high are not permitted within 200 feet of the facility. Six foot high chain link fences are not permitted within 500 feet. No wire fence should extend .5 degrees above the plane of the facility antennas. Exceptions may be granted for fences that are essentially radial to the facility.
5. **Power and Control Lines.** Power and control should be installed underground within 600 feet of the facility. All overhead lines should be radial to the facility between 600 and 1200 feet from the facility. No overhead lines or supporting structures can subtend a vertical angle as measured from the ground at the facility of 1.5 degrees. No overhead conductor can extend .5 degrees above a plane containing the facility antennas and occupy more than 10 degrees of azimuth around the facility.
6. **Structures.** No structures should be permitted within 1000 feet of the facility. All structures that are partly or entirely metallic shall subtend vertical angles of 1.2 degrees or less as measured from the ground at the facility. Wooden structures with negligible metallic (including internal wiring) content may be tolerated if they subtend vertical angles of 2.5 degrees or less.
7. **Temporary Obstructions.** No vehicles, farm implements or other mobile objects shall be left in the clear-zone. Farming equipment is tolerated to the extent that it is in use while in the clear-zone.

03/07