CHAPTER 11

DISPOSAL

SECTION I. GENERAL

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11-1. Purpose. This chapter sets forth general authority, responsibilities, procedures, methods, and guidance for the performance of real property disposal functions.

11-2. Applicability. This chapter is applicable to Division and District Engineers having real estate responsibilities.

11-3. Authority. The major portion of real property disposal actions performed by the Corps of Engineers is predicated on authority derived from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), hereinafter referred to as the Federal Property Act, and the rules, regulations and delegations of authority issued by the General Services Administration (GSA) thereunder. Other authorities relating to the disposal of military real property are found in AR 405-90. The Army and Air Force Basic Real Estate Agreements covering disposal of Air Force real estate are found in AR 405-5 and AFR 87-15.

11-4. Rules and Regulations of the General Services Administration (GSA). Under the rules, regulations and delegations of authority issued by GSA under the Federal Property Act, the military departments are authorized to dispose of the following:

a. Real property under its control (except land withdrawn or reserved from the public domain), together with the improvements thereon and related personal property, which has a value of less than $1,000.

b. Leases, permits, licenses, easements, or similar interests, including Government-owned improvements on the premises, unless it is determined that the interest should be included with the disposal of other property being reported to GSA for disposal.

c. Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

d. Standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land.

11-5. Disposal Priorities. Consistent with the best interest of the United States and with applicable laws and regulations, the following priorities should be followed in disposing of real property no longer needed by the Departments of the Army and Air Force: *

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a. Transfer to other Department of Defense agencies and the U.S. Coast Guard.

b. Transfer to other Federal agencies.

c. Conveyance to eligible non-Federal agencies.

d. Sale to the public.

11-6. Environmental Considerations. The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 et seq.) directs that a five point Environmental Impact Statement (EIS) be prepared, circulated among interested Federal, State and local agencies, and filed with the Environmental Protection Agency (EPA) before a major Federal action is taken which affects the quality of the human environment. This may include some disposals. No major disposal action will be undertaken where the Corps of Engineers is the disposal agency, or is acting for the disposal agency, until the required EIS has be submitted to the EPA unless a "Finding of No Significant Impact" (FONSI) has been prepared for the action, or if the action is classified as a "categorically excluded" item because it has no significant effect on the environment. The Environmental Assessment is subject to review and approval in accordance with instructions found in AR 200-1 and AR 200-2 (to be printed) for military real property disposal, and the forthcoming Engineer Regulation for civil works real property disposal. Where property is reported to GSA for disposal, GSA is responsible for compliance with NEPA.

11-7. Preserving Historic Landmarks and Properties. Purposes of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470) and Executive Order 11593, Protection and Enhancement of the Cultural Environment (13 May 1971) have been set forth in Chapter 8, para 8-2b, supra, and the authorities there cited also apply to the disposal of real property. Specific policy guidance in connection with disposals having historic significance is published in AR 200-1 and AR 405-90 for military real properties and in ER 1105-2-460 for civil works real properties.

a. The Criteria of Adverse Effect on eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property.

(2) Isolation from or alteration of the property's surrounding environment.

(3) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

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b. It is normally intended that the agency responsbilities under Section 106 of the National Historic Presentation Act of 1966 and Executive Order 11593 run concurrently with the NEPA review process. However, obligations pursuant thereto are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required.

11-8. Compliance with State Coastal Zone Management Programs. Paragraph 8-2c of Chapter 9, supra, outlines the provisions of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.). These provisions also apply to the disposal of land or water resources when the action is subject to the Federal consistency requirements of the Act and when the disposal is consistent with an approved state management program.

11-9. Protection of Wetlands. The requirements of Executive Order 11990, Protection of Wetlands, 42 Fed. Reg. 26961, (24 May 1977) are applicable to the disposal of Federal lands and facilities, and the policy and procedures implementing the order are as set forth in paragraph 8-2d of Chapter 8, supra.

11-10. Floodplain Management. The requirements of Executive Order 11988, Floodplain Management, 42 Fed. Reg. 26951, (24 May 1977) and its implementation are outlined in paragraph 8-2e of Chapter 8, supra. In accordance with ER 1165-2-26, paragraph 13, when civil works property in floodplains is proposed for disposal to non-Federal public or private parties, the Corps of Engineers shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate.

11-11. Nondiscrimination Covenant. As required by Section 101-47.307-2 of the Federal Property Managemnt Regulations (FPMR), substantially the following covenant will be included in all deeds or other disposal instruments to public bodies when the sale is negotiated under Section 101-47.304.9(4) of the FPMR:

The grantee convenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that said grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, age, sex, handicap, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. The convenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this convenant without regard to whether it *

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remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

11-12. Disposition of Proceeds from Disposal.

a. Land and Water Conservation Fund. Except as provided in b and c below, and unless otherwise obligated by existing or future acts of Congress, all proceeds received from any civil works project disposal of surplus real property or related personal property under the Federal Property Act, shall be covered into the land and water conservation fund in the Treasury of the United States (16 U.S.C 460L-5(a), FPMR Section 101-47.307-6). This includes the net proceeds from the sale of timber and structures.

b. Department of Defense Family Housinq Management Account. Section 501(b) of Public Law 87-554, as amended, 42 U.S.C 1594a-1, provides that the proceeds from the disposal of family housing of the Department of Defense, including related land and improvements, shall be transferred to Family Housing Management Account, Defense. This does not include civil works housing, or houses on land acquired for military purposes unless the housing was specifically acquired to house military personnel. This means that excess military family housing and related land and improvements should be reported to GSA on Standard Form 118 separate and apart from Reports of Excess for other portions of an excess installation. Particular care should be taken to ensure that the following statement be included in each such report of excess to GSA:

"Net proceeds from the sale of family housing, including related land and improvements, shall be remitted to the Department of Defense for deposit to Family Housing Management Account, Defense (97 X 0700)."

c. Proceeds from Sale or Transfer of Property Acquired. Under Section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), the proceeds from a sale or transfer of buildings or other improvements on river and harbor improvement projects may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, which are on nonexcess land come within the purview of this law. Where both land and buildings or other improvements are excess, proceeds from the sale of land and buildings, or either one, will be deposited in the land and water conservation fund as provided in paragraph a, above.

11-13. Reserved.

11-14. Reserved.

11-15. Reserved. *

SECTION II. PROCEDURE FOR PLACING REAL PROPERTY IN EXCESS STATUS

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11-16. Army Military Real Property. Military real property, including industrial real property, under the control of the Department of the Army will be placed in excess status as outlined in AR 405-90.

11-17. Air Force Military Real Property. Military real property under the control of the Department of the Air Force will be placed in excess status as outlined in AFR 87-4.

11-18. Army Military Leased Property.

a. Department of the Army command installations or parts thereof held by lease, permit, or other similar right of occupancy, excess to the needs of the using service will be reported direct to the Division or District Engineer for disposition wherever essential continuing operations of the installation will not be adversely affected, and the annual rental does not exceed $50,000.

b. Division Engineers are authorized to make the finding that leased real estate of the Corps of Engineers, where essential continuing operations of the installation are not adversely affected, and the annual rental does not exceed $100,000, is excess and to take necessary action to cancel or otherwise dispose of leases.

c. Any leased command real estate not coming within the category outlined in a and b above will not be considered by the Division Engineer as excess until notice is received from the Chief of Engineers (COE) that the property has been placed in excess status in accordance with AR 405-90.

11-19. Army Civil Works Real Property.

a. Fee-Owned Land and Easements.

(1) Action by Division/District Engineer (DE). When the DE is of the opinion that real property acquired in fee or easement for a civil works project is no longer required for such purpose, he will submit a report and recommendation to HQDA (DAEN-REM) WASH DC 20314, accompanied by:

(a) A brief description of the character or nature of the land with an appropriately marked map showing the approximate acreage consideration to be excess. Detailed perimeter descriptions need not be procured or furnished with the report and recommendation for exessing.

(b) Description of buildings and improvements. *

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(c) Information as to circumstances that might hinder or prevent disposition, e.g. remoteness of location, unfavorable topography, and lack of legal access.

(d) Information as to when and how the property was acquired.

(e) Information as to the estate which the Government has in the land, reservations and exceptions in and to the Government's title, and outstanding interests granted by the Government or reserved or excepted in the acquisition of the land, will be stated with particularity. The map or plat will delineate any grant, exception or reservation, such as telephone, telegraph, electric transmission, oil, gas, and water lines.

(f) Purchase price of lands (estimate if only a portion of original tract), buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(2) Action by the Office of the Chief of Engineers. When the value of an easement interest reported pursuant to (a)(1) above does not exceed $1,500, OCE will make the final determination of excess and authorize action accordingly. In the case of fee-owned land regardless of value, or easement interests having a value in excess of $1,500, when OCE finds that no requirement for the property exists, a recommendation will be made to the Secretary of the Army that authority be granted for disposal of the property.

b. Leaseholds. When the DE is of the opinion that real property aquired by lease for a civil works project is no longer required for such purpose, and after screening the property for other Federal requirements in accordance with Section III of this Chapter, he will take necessary action to terminate the lease in accordance with the procedure outlined in Section X.

11-20. Reserved.

11-21. Reserved.

11-22. Reserved. *

SECTION III. SCREENING, REASSIGNMENT AND TRANSFER OF REAL PROPERTY

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11-23. Screening for Defense Needs. Real property which becomes excess to the needs of any element of the Army or Air Force will be screened against requirements of other Department of Defense (DOD) agencies and the U.S. Coast Guard in order to promote and obtain the most efficient and complete utilization of real property before disposing of it.

a. Procedure for Screening Army Military Property. Screening for defense requirements with respect to base closures publicly announced by the Secretary of Defense or Secretary of the Army which result in excessing of real property will not be accomplished unless directed by HQDA (DAEN-ZCI) WASH DC 20314. Instructions to screen will be included in the disposal directive transmitted to the DE when such action is desired. In the absence of such instructions, it is presumed that DOD has negatively evaluated all possible requirements of DOD agencies before making the public announcement.

(1) Pre-owned Land. Screening is required in all other cases unless specifically directed otherwise. Property will be screened simultaneously against other Army requirements, and for Navy, Air Force, Coast Guard, and Defense agency requirements. The property should also be screened against known Department of the Army Civil Works requirements.

(a) The DE will dispatch a screening message promptly upon receipt of an excess directive or recommendation pursuant to AR 405-90. The sample screening message (Figure 11-1), or a letter similar in form and content will be used without substantial deviation.

(b) All action addressees and parties listed for information on Figure 11-1 will be included, except that Air Force real property in Hawaii will be screened with the Commander-in-Chief, Pacific Air Forces, in lieu of HQ, USAF. The appropriate major Army command, when not the using command, will be listed as an action addressee.

(c) In no case will screening be deferred unless authorized by DAEN-REM. At the expiration of the screening period (normally 30 days) a report of results will be forwarded and subsequent action initiated as provided in paragraph e below.

(d) For certain cases, most frequently in connection with base realignments or Executive Order 11954 surveys, accelerated screening procedures are set out in AR 405-90.

(2) Capehart and Wherry Housing Projects. Due to the complicated financial arrangements under which such projects are constructed and *

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operated, the disposal thereof, whether separately or as a part of a larger installation, requires careful study. In order to assure maximum time in which to discover and evaluate problems arising in each of such cases, the DE will notify HQDA (DAEN-REM) WASH DC 20314, by teletype, immediately upon receipt of information of an installation commander's recommendation of excess involving Capehart and acquired Wherry housing projects. Included with this notice will be advice on the source of utilities and any problems of which the DE may be aware.

b. Leaseholds, Buildings and Improvements. Leaseholds, buildings, and other improvements will not be screened formally within the Department of the Army (DA). When such property is made available or disposal under AR 405-90 and Section II of this chapter, it will be screened by the responsible DE with the Air Force, Coast Guard, and Navy and against known Army military and civil works requirements within the Division. Screening with the Air Force of leaseholds having an annual rental in excess of $50,000 will be addressed to HQ, USAF. Other Air Force screening under this subparagraph will be with local Air Force installations. Screening with the Navy will be addressed to the appropriate naval district. Screening with the Coast Guard and Defense agencies will be with the local representatives of those agencies. Property under the jurisdiction of GSA which has been assigned to the DA or Department of the Air Force (DAF) for use is not subject to this screening procedure, but the DE will determine whether such property would serve any current unfulfilled real property acquisition directives pending in his office.

(1) Family Housing Leases. Family housing leases under authority of Section 515, public Law 84-161, 69 Stat. 352, as amended and extended, will be terminated promptly upon determination that the property is excess to the needs of the using command, without screening for other requirements.

(2) Limit Screening. Screening which would serve no useful purpose is to be avoided. Screening of buildings and improvements on sites needed for approved construction should be limited as construction schedules require. The DE will take timely action to minimize additional cost and rental payments due to screening and may, at his discretion, limit screening of leaseholds and improvements to be removed from the site to informal notices to appropriate local. Defense agencies. The DEs are authorized to waive screening of nonassignable or short term interests in real property when such screening would serve no useful purpose.

(3) Notice of Restoration Requirements. All screening notices of leaseholds and improvements available for off-site removal will indicate that transferees will be required to perform necessary site *

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restoration as a prerequisite to obtaining transfer and will reflect the extent of restoration required.

c. Procedure for Screening Civil Works Property. Buildings and improvements, leaseholds, and fee-owned land that have been determined excess to civil works requirements in accordance with this Chapter will be screened with the appropriate major Army and local service commanders, and with the Navy, Air Force, Coast Guard, and Defense agencies. (GSA property assigned to the Army for use is not subject to formal screening hereunder but will be screened against known acquisition directives or requirements in the DE office.) Except to the extent that DEs determine they are inappropriate, screening procedures for civil works property will be the same as for Army military property.

d. Screening of Air Force Property. HQ, USAF and the major Air Force commands screen Air Force real property before authorizing disposal action by the Corps of Engineers in accordance with AFR 87-4. DEs will act on requests for disposal action on buildings and improvements and leased property received directly from major Air Force commands which conform with AFR 87-4. Disposal directives on fee-owned land and easements will be issued by HQ, USAF and referred through DAEN-REM.

e. Report on Screening and Related Actions. Immediately following the screening of fee-owned land, the DE will forward to DEAN-REM a report of the results of the screening (with comments and recommendations where a further Army or other Defense requirement is indicated). This report will serve as one of the basis of a determination whether the property is excess to the requirements of the DOD. Upon dispatch of the screening report, the DE will proceed with further action pursuant to Sections IV and VIII of this Chapter. No report on screening of civil works property is required unless there is a request for transfer or reassignment of the property screened.

f. Property with an Estimated Value of $l00,000 or Less. If the property has an estimated value of $100,000 or less, the determination that the property is excess to Army requirements will be made by the Department of the Army without referral to DOD, and the Chief of Engineers will direct the DE accordingly. Upon receipt of this disposal directive, prompt action will be taken to report the property to GSA or take other disposal action as appropriate.

g. Estimated Value in Excess of $100,0OO. If military property has an estimated value in excess of 100,000, it must be reported to the Armed Services Committees of Congress pursuant to Title 10, United States Code, Section 2662. The final Army determination of excess and recommendations to the Assistant Secretary of Defense (MRA&L) to *

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approve the proposed disposal report to the Armed Services Committees by the Chief of Engineers, utilizing Real Estate Disposal Report, ENG Form 2187R, are combined in a single action. The Chief of Engineers will advise of DOD approval of the proposed disposal when made. Upon receipt of this information responsible Division and District Engineers will furnish GSA a preliminary report of excess. The preliminary report of excess will be finalized, upon receipt of instructions from the Chief of Engineers. This procedure is also applicable to Air Force disposals. If the preliminary report of excess is sufficiently complete and accurate, it may be finalized by letter or simple statement on Standard Form 118, Report of Excess Real Property.

h. Date of Excess for Reporting Purposes. From the above, it will be noted that where property has an estimated value in excess of $100,000, the determination that the property is excess to the requirements of the Department of the Army is, in effect, made concurrently with the determination that the property is excess to the requirements of the DOD, or is approved for transfer to another military department. For all practical purposes, these determinations are best evidenced by the Assistant Secretary of Defense's approval of the proposed disposal. The date of approval may be used as the date the property was determined excess to Army requirements for reporting purposes.

11-24. Reassignment and Transfer Procedures. Reassignment refers to the changing of the administrative or command jurisdiction of real property from one command to another within the same military department. Reassignments may be accomplished by the Secretary or the staff without prior approval of the DOD or the Armed Services Committees of the Congress. Tranfer refers to changing the jurisdiction for using and administering real property from one military department to another.

a. Reassignment Procedures - Army.

(1) Military. Reassignments of military real property are accomplished pursuant to a directive from DAEN-REM. These are not real estate disposal actions.

(2) Civil Works. Reassignments from civil works to military jurisdiction, and vice versa, are accomplished pursuant to directive or approval of the Secretary of the Army based on the recommendations of the Chief of Engineers.

(3) Information Required. Information to support recommendation for reassignments of military or civil real property to another using service of the Army, or to change the military or civil accountability within the Corps, will be furnished by the DE to DAEN-REM as follows: *

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(a) Reference to excess directive, if any.

(b) Description and map of lands.

(c) Date, manner, and cost of acquisition of land and improvements.

(d) Reference to any encumbrances which might affect the reassignment and use.

(e) Proposed effective date of reassignment.

(f) Proposal new use.

b. Reassignment of Air Force Property. The Air Force Staff reassigns real property within the Department of the Air Force.

c. Transfer of Military Property. Procedure for transfer among military departments is substantially the same as for transfer to other Federal agencies, and is set forth in Sections IX and XI of this Chapter.

11-25. Screening of Excess DOD Property for Nondefense Federal Agency Needs.

a. Screening by GSA.

(1) GSA will screen all excess real property reported to it for disposal, to determine whether the property is surplus to all Federal agencies.

(2) GSA will screen certain classes of excess real property which must be reported to it for screening, even though the Department of the Army will act as the disposal agency (Section V of this Chapter).

(3) Under the FPMR, Federal agencies are allowed 30 days to advise whether there is a tentative or firm requirement and another 30 days to determine and advise whether the tentative requirement is firm. Where there is a firm requirement, agencies are allowed an additional 60 days to prepare and submit a formal request for transfer pursuant to FPMR Section 101-47.203-7. The DE should obtain from GSA information on the status of screening if advice is not furnished promptly after expiration of the screening period.

b. Screening by Corps of Engineers. Properties which are not reported to GSA for disposal or screening will be screened by the DE with nondefense Federal agencies at the same time they are screened with Defense agencies. Screening of such properties will be limited to *

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agencies that maintain local offices and may be done on an informal basis. The DE may waive screening of nonassignable and short term interests in real property when they determine such screening will serve no useful purpose. When screening discloses no requirement, the property will be determined surplus and disposed of.

11-26. Notices to Departments of Interior (DI); Health and Human Resources (HHR); Education; and Housing and Urban Development (HUD). Simultaneously with screening under paragraph 11-25b notices of availability will be given to DI of land suitable for public park and recreation or an historical monument site; to HHR and/or Department of Education property suitable for educational purposes or to protect the public health, and to HUD of property for housing and related facilities (Section 101-47.203.5 FPMR). Where such notice is given, these departments will be notified promptly if screening discloses another Federal requirement for the property. They will also be notified if there is no other Federal requirement and the property is determined surplus.

11-27. Source of Supply-Blank Forms. ENG Forms with the "R" suffix mentioned in this Chapter are available from local Forms Management Officers. All other forms mentioned in this Chapter are available through normal publications supply channels with the exception of Standard Form 118, Report of Excess Real Property, which will be procured directly from the General Service Administration.

11-28. Reserved.

11-29. Reserved.

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SECTION IV, CLEARANCES - ARMY MILITARY REAL PROPERTY

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11-30. Reports to the Armed Services Committees.

a. This Section describes the responsibilities of the Chief of Engineers in, and prescribes procedures for, clearing proposals for certain leasing and for disposals of Army real property with the Department of Defense and the Armed Services Committees of the Senate and House of Representatives. (The Air Force obtains its own clearance.) It is applicable to Division and District Engineers having military real estate responsibility. Clearance is not required for civil works properties.

b. Title 10 U.S.C. 2662, as amended by P.L. 96-418, 10 October 1980, provides, in part that:

"(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transac tion is submitted to the Committees on Armed Services of the Senate and of the House of Representatives:

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"(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $l00,000.

"(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $100,000.

"(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $100,000.

"(6) Any termination of modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the property by the military department.

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"(c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or *

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grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

"(d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive."

c. While not specifically required by 10 U.S.C. 2662, DOD has directed that all proposed relinquishments of public domain land will be reported to the Armed Services Committees where (1) the area exceeds 500 acres or (2) the estimated fair market value of the property exceeds $100,000.

11-31. Clearance with the Armed Services Committees.

a. Prior to a final report of excess, or transfer to another Federal agency or a State, of any Government-owned military real property with an estimated value, including the value of existing improvements, in excess of $l00,000 the proposed disposal must be reported to the Committees. Also, proposals to outlease military real property for other than agricultural or grazing purposes must be reported if the estimated annual rental consideration is more than $100,000. A formal appraisal for estimating value need not be made. Reports to the Committees pertaining to Army military real property are made by the Chief of Engineers, and copies of reports are furnished the two senators of the State, and the congressman of the district where the property is located. Reports pertaining to Air Force property are made by that department. DEs, upon request, will assist Air Force commands in assembling the required data.

b. For Army property, data will be furnished in the format shown in Figure 11-2 (ENG Form 2187-R, Real Estate Dispsal Report), and three copies forwarded to HQDA (DAEN-REM) WASH DC 20314. The information should be submitted within three weeks after dispatch of the screening message, or within three weeks after receipt of the disposal directive when screening is not required.

c. Clearance for transfer to another military department is obtained by the acquiring department. However, HQDA (DAEN-REL) obtains clearance for transfer of Army property to a nondefense Federal agency where authorized by law.

11-32. Prior Approval of Department of Defense.

a. DOD Instruction 4165.12 requires advance approval by the Assistant Secretary of Defense (MRA&L) of disposal actions requiring congressional committee clearance. DOD approval is also required for *

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withdrawal from excess of real estate, or an interest in real estate, which has an estimated fair market value in excess of $100,000

b. The data submitted pursuant to paragraph 11-31 will be used to obtain DOD approval of projects to be submitted to the Armed Services Comittees. Appropriate information will be furnished to obtain required DOD approval of withdrawals from excess.

11-33. Additional Data for Clearance with the Committees. To support Army witnesses appearing before the Armed Services Committees, and to satisfy other information requirements, include the following data when forwarding the ENG Form 2187-R (Figure 11-2).

a. Four copies of a site plan of the installation, clearly depicting the property involved, and four copies of a real estate map, color coded with legend, showing the area and acreage to be excessed.

(1) Segment-size maps and plans should be of excellent quality, current, show accurate acreages, and current name of installation. They must be clearly visible at a distance of 30 feet or more.

(2) Basic color codes for maps are:

Red - Excess Area(s)

Green - Retained Area

Yellow - Previously Excessed Area(s)

Black or Dark Blue - Installation Boundary, in heavy definintion

Other Colors - for other purposes

b. Copy of last utilization inspection report, plus information as to when and how the excess property was last used by the Army.

c. Basis for disposal: Base closure announcement, E.O. Survey; Command Report of Excess, Report of Availability, etc.

d. A list of and general terms of any outgrants in effect on the excess area.

e. Whether continuing military activities are housed on the property proposed for disposal; arrangements which have been made to provide space for these activities; estimated cost of leasing or converting space for that purpose, and any other costs of closing or severing the installation and relocating the activities. *

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f. Whether civilian employees will lose their employment, number of employees involved, and to what extent they can be employed elsewhere.

g. Details of significant history of acquisition, development, and disposal, if not included in ENG Form 2187-R. Include official name of installation and former designations.

h. Description of any related or off-post family housing, giving number of units, type (MCA-Capehart, etc.) acreage of site, land and construction costs, and distance from installations served

i. Probable impact on local economy, if any.

j. Estimate of any annual savings in operating and maintenance costs.

k. Statement as to exchange potential of excess area.

l. Estimate of value, including any restrictions or limitations on prospective use of the land by subsequent users.

m. Character and use of area in vicinity of excess area.

n. Care and custody costs for excess area.

o. Staff/MACOM coordination.

p. Environmental Assessment.

q. Any other pertinent information, e.g., any adverse factors severance or undesirable impact on utility systems, and local interest in acquiring the property.

r. Congressional district in which the property is located.

11-34. Coordination with GSA. At the time of formal submission of the Disposal Report to the Armed Services Committees, DAEN-REM will furnished copies to the DEs and to the central and regional offices of GSA as advance information to permit preliminary disposal planning.

11-35. Reserved.

11-36. Reserved.

11-37. Reserved. *

SECTION V. REPORTS OF EXCESS REAL PROPERTY AND RELATED PERSONAL PROPERTY TO GENERAL SERVICES ADMINISTRATION (GSA)

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11-38. Delegation of Authority to Division and District Engineers. Much of the authority and responsibility of the COE as real estate agent for the Departments of the Army and Air Force to report excess real and related personal property to GSA in accordance with the provisions of the Federal Property Act, and the Federal. Property Management Regulations (FPMR), subpart 101-47.3 has been delegated to Division and District Engineers having responsibility for real estate operations. Final reports will be made only after the property has been determined excess to the needs of the Department of Defense, in accordance with Section III supra, and has been cleared with congressional committees, if required, in accordance with Section IV.

11-39. Excess Property Reported for Disposal. The following types of excess real property must be reported to GSA for disposal, utilizing Standard Form 118 (SF 118), Report of Excess Real property, as set forth in paragraph 11-45 of this section:

a. Fee-owned. All fee-owned property, with improvements and related personal property, which has, in the opinion of the DE, an estimated fair market value of $1,000 or more, together with such incidental, related, or appurtenant lesser interests, with or without Government-owned improvements and related personal property, held under lease, permit, license, easement, or similar instrument, useful in connection therewith, except property which is subject to:

(1) A lease containing an option to purchase;

(2) A lease containing a right of first refusal to purchase or to lease for an additional period;

(3) A right in the Government's grantor to the reversion of title; or

(4) A right reserved by the Government's grantor to repurchase the property.

b. Public Domain. All withdrawn or reserved public domain lands, together with the improvements thereon which, in the opinion of the DE, have an estimated fair market value of $1,000 or more, and for which notification, pursuant to 43 CFR 2374.1, has been received from the Bureau of Land Management (BLM) that the property, in effect, has been determined excess within the meaning of the Federal Property Act (see Section VII for procedures for disposal of public domain land). *

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Minerals in the lands will be specifically excluded from the report of excess unless BLM advises otherwise. The Report of Excess, SF 118, will include as a part of the report on the Government's legal title, a true copy of the notice by BLM to report the property excess, and information of record in BLM on claims, if any, by other agencies, and any claims or encumbrances under the public land laws.

11-40. Excess Property Reported for Screening. The types of property described in a, b, and c below must be reported to GSA for screening purposes notwithstanding the fact that the military departments have been delegated authority to dispose of such property. SF 118 will be utilized for reporting these types of property without attaching the usual Schedules A, B, and C and supporting documents. A notice should be included on the face sheet that "This report is made for screening purposes only. Disposal will be accomplished by the Corps of Engineers." Distribution of copies of such reports within the departments is not required.

a. Land held under lease, permit, license, easement, or similar instrument, other than listed in paragraph 11-41.

b. Improvements located on nonexcess Government-owned lands (including improvements on land held under permit from another Government agency; see Section VII infra, for preliminary procedure in these cases), which improvements, with related personal property, in the opinion of the responsible DE, have an estimated net salvage value of $1,000 or more.

c. Improvements located on excess land held under lease or other temporary right of occupancy (even though a report of excess is not required for the leasehold itself or other right of occupancy interest under the criteria set forth in paragraph 11-41) when, in the opinion of the DE, the improvements have a net salvage or market value of $1,000 or more, and it is proposed to dispose of such improvements by sale for removal from site. The report of excess will contain an estimate of the cost of restoration necessary under the lease that a prospective transferee agency will be required to assume.

d. Fee-owned property which, with improvements and related personal property, in the opinion of the responsible Division or District engineer, have a fair market value of $1,000 or more, and is not reported to the General Services Administration for disposal as a result of the exception contained in paragraph 11-39a, above (because of outstanding options to purchase, etc., or because of rights retained by the Government grantor). *

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11-41. Excess Property Exempted from Reporting. No reports to GSA are required for the following types of excess property:

a. Fee-owned land, including withdrawn or reserved public domain land which BLM made available for disposal under Federal Property Act, together with the Government-owned improvements and related personal property, having an estimated fair market value of less than $1,000 in the opinion of the responsible DE;

b. Excess non-Government-owned property held under lease, license, easement, or similar instrument, when Government-owned improvements with related personal property have a net salvage value of less than $1,000 or are to be transferred to the owner of the land in retoration settlement, and;

(1) The lease or similar instrument is subject to termination by the grantor of the premises within nine months; or

(2) The remaining term of the lease or similar instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(3) A provision of the lease or similar instrument would preclude transfer to another Federal agency or disposal to a third party; or

(4) The lease or similar instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet; or

(5) Where additional rental would be incurred.

c. Excess Government-owned improvements on nonexcess land, which improvements, in the opinion of the responsible DE, have a net salvage value of less that $1,000.

d. Leased space assigned by GSA, and land and improvements owned by and permitted from other Government agencies.

e. Excess timber, sand, gravel and stone-quarried products, and growing crops on nonexcess land regardless of value.

f. Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of Interior for return to the public domain pursuant to Section VII infra.

g. Prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and house trailers (with or without *

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undercarriages), which are located on nonexcess land for off-site use. These types of structures shall be reported as personal property in accordance with FPMR, Part 101-43, Utilization of Personal Property. However, when such structures are located on leased permitted land subjecting the Department to any restoration obligations, the property will be treated as real property for the purpose of satisfying such obligations to the maximum extent feasible

11-42. Evaluation and Reporting of Flood Hazards. Pursuant to Executive Order 11296, 10 August 1966, the DE having civil works responsibility for the area where property proposed for disposal is located will evaluate the property (civil or military) for the presence of flood hazards. If such hazards are found, a report will be forwarded to HQDA (DAEN-REM) recommending appropriate restrictions with respect to future uses of the property, or that the property be withheld from disposal. If decision is made to proceed with disposal, detailed information regarding the flood hazard will be reported to GSA on SF 118 as required by FPMR, 101-47.202-2, with the appropriate restrictions with respect to use of the property by a purchaser and his successors. (See ER 1105-2-40 for information on the Flood Plain Management Services Program.)

11-43. Determination of Values for Reporting. Where more than one parcel or item of excess property is involved at the same project or installation, the total value of all such parcels or items will be included in determining whether the property has an estimated value of $1,000 or more for the purpose of making reports of excess. Estimates of value should be made by qualified real estate employees, but not necessarily by a professional appraiser.

11-44. Conditional Reports of Excess. As an exceptions to its general policy, GSA has agreed with the Department of Defense to accept reports of excess on some facilities with instructions on their disposal, specifically:

a. Defense Industrial Reserve (DIR). The Defense Industrial Reserve Act 50 U.S.C. 451 et seq., authorizes the Secretary of Defense to determine which excess industrial properties should become a part of DIR and to formulate a national security clause or recapture provisions to preserve the production capacity of the plants for use in the event of a national emergency. Excess DIR plants are reported to GSA for disposal subject to the national security clause or the recapture provisions. (See FPMR Subsection 101-47.306-2 for procedures where GSA is unable to dispose of the property because of the restrictions imposed by the national security clause or recapture provisions.) *

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b. Reserving Property for Civil Defense Purposes. GSA has agreed to accept reports of excess of missile sites and other facilities having similar protective features, with restrictions on their disposal. DEs will be notified when DOD advises that a specified local government unit is interested in acquiring such property. Reports of excess will specify the local government unit interested. Disposal of the property will be limited to conveyance to the local government unit, with conditions restricting its use to civil defense purposes for a period of 20 years, with reverter to the United States for breach of condition. In appropriate cases, GSA will enter into a temporary lease arrangement if necessary to afford a local government unit an opportunity to obtain the necessary funds for purchase. This procedure is limited to causes where DOD has determined and advised there is a civil defense need. Disposal action will not be delayed pending receipt of such advice.

11-45. Preparation and Submission of Reports of Excess.

a. Preparation.

(1) General. Reports of excess will be prepared on SF 118, with schedules, in accordance with the instructions contained in FPMR section 101-47.4902, and paragraph 11-39. However, since the type of information called for in Block 9 of SF 118 and Columns f, g, h, and i of schedule A is not generally applicable to camps, airfields, etc., such information will be furnished only when it is available and can be furnished without additional cost. Reports of excess will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included as prescribed in Section XIII, infra. Information on flood hazard will be included as required by paragragh 11-42.

(2) GSA Regulations. Pursuant to GSA regulations, all final reports of excess will be made only after the property has been determined excess to the needs of the Department of Defense and will bear the statement: "This property has been screened against the known defense needs of the Department of Defense." Report of excess will indicate that the provisions of Title 10, United States Code, Section 2662, requiring reports to the Armed Services Committees of Congress, have been met, or that the report of excess is not subject to this section.

(3) Reports of Excess - Air Force Property. The Air Force will prepare SF 118, with Schedules A and C, and transmit them to the DE for completion and execution. Land descriptions, title reports, and other data required by the FPMR will be the responsibility of the DE. *

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(4) Reports of Excess - Army Property. DEs will prepare the SF 118 and the schedules for excess Army property.

b. Submission. Reports of excess will be transmitted directly by the DE to the appropriate regional office of GSA. Each DE making such reports of excess will assign a number in Block 1 of SF 118, beginning with No. 1 for the first report and continuing in numerical sequence for succeeding reports made during the calendar year. The number will be preceded by the symbol of the DE making the report and the calendar year e.g., SWF-79-6, for the sixth report submitted by Fort Worth District of Southwestern Division for calendar year 1979.

11-46. Report on Government Title. In all cases where Government-owned land is reported, there shall be attached to and made a part of SF 118 (original and copies thereof), a report prepared by a qualified employee of the holding agency on the Government's title to the property, based upon his review of the records of the agency. The report shall recite:

a. The description of the property.

b. The date title vested in the United States.

c. All exceptions, reservations, conditions and restrictions relating to the title acquired.

d. Detailed information concerning any action, thing or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected, or may have affected, the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title or interest may have been affected). In the absense of any such action, thing or circumstance, a statement to that effect shall be made a part of the report.

e. The status of legislative civil and criminal jurisdiction over the land peculiar to the property by reason of it being Government-owned land. If the United States does not hold such legislative jurisdiction, the report on government title should so state.

f. All exceptions, reservations, conditions and restrictions imposed by higher authority on the property at time of disposal. No additions or substantive changes to these will be made without prior approval from HQDA (DAEN-REM) WASH DC 20314. *

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g. If the property, or any portion of it, has been listed in the National Register of Historic Places, or has been nominated for listing or nomination, this should be included in the SF 118. Specific fixtures and related personal property having possible historic or artistic value should also be included. (See Section I, para 11-7, supra, for information on historic preservation.)

11-47. Outgrant Instruments, Appraisals and Muniments of Title. There shall be transmitted with the SF 118 copies of outgrants involving the property reported, all conveyances, encumbrances and other instruments affecting the use and operation of the property, including deeds, mortgages, and agreements covering and licenses to use any patents, processes, techniques, or inventions. Where there is more than one like instrument as, for example, agricultural leases, it may be preferable to list them, locate them on the land use map, and furnish a sample copy. FPMR contemplates that muniments of title will be transmitted with the report of excess. The title report (paragraph 11-46, supra) will state that HQDA (DAEN-REP) WASH DC 20314 is the custodian of title papers and has been requested by the DE to transmit applicable title papers direct to the GSA Regional Office. Accordingly, as soon as practible after receipt of an information copy of the declaration of excess by the using service, and a disposal directive, the DE will assign a disposal report number and advise DAEN-REP to transmit the pertinent title papers directly to the appropriate GSA Regional Office, citing the disposal report number as a reference. Simultaneous action by DAEN-REP and the DE to assemble necessary reporting data is important to avoid delay of acceptance by GSA of the Report of Excess. If experience should demonstrate that such simultaneous preparation and transmittal of data is not practical in saving time and effort, the DE will arrange in advance for transmittal of the necessary title data from DAEN-REP for incorporation in the Report of Excess before transmittal by the DE to the GSA Regional Office.

11-48. Deposit of Proceeds from Disposal of Family Housing in the Family Housing Management Account.

a. Title 42 U.S.C. 1594a-l(b) provides that the proceeds from the disposition of Department of Defense Housing, including related land and improvements, shall be transferred to the DOD Family Housing Management Account for the purpose of debt service. Arrangements have been made between DOD and GSA to implement this law and apply it to excess MCA housing as well as to housing encumbered by mortage debts such as Capehart and Wherry Housing projects. (See Section I, para 11-l2b, supra.)

b. The agreement with GSA calls for separate identification and description in the Report of Excess (SF 118) of those improvements *

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which are considered family housing within the purview of the law and a request in the report that proceeds from disposal be transferred to the DOD Family Housing Management Account. (The actual transfer of funds will be accomplished at Washington level.)

c. Where the Report of Excess includes both housing and property not related to housing, separate schedules (SF l18a and b) will be prepared to cover the housing involved, including related land and other improvements. The housing schedules should be annotated and arranged categorically to show:

(1) Number of structures by type of authorization, i.e. Wherry Act, Capehart Act, Military Construction Authorization Act, Lanham Act, etc.

(2) The number of family units.

(3) Those improvements and collateral facilities which are considered "related" to the housing.

(4) Where reasonably apparent, a description of the acreage or boundaries of the family housing areas as distinguished from other excess lands.

(5) A statement as follows: "Net proceeds from the sale of this family housing, including related lands and improvements, shall be remitted to DOD for deposit to Family Housing Management Account, Defense 97X0700."

11-49. Supplemental Information. The DE will cooperate to the greatest extent practicable in furnishing further information and assistance requested by GSA Regional Offices. However, requests for engineering surveys should be carefully monitored in the interest of economy. When such requests appear excessive or other requests for services appear to require unnecessary expenditures, DAEN-REM will be fully informed, with recommendations, in order that the matter may be resolved through appropriate coordination with the GSA central office.

11-50. Reports Submitted for Screening. Excess leaseholds and buildings and improvements to be disposed of separately from the land which, pursuant to paragraph 11-40, must be reported to GSA for screening purposes only, will be reported immediately when the property is determined to be excess to the particular military department having jurisdiction. The report will contain the statement: "This property is reported for screening with civilian agencies by GSA prior to its disposal by the Corps of Engineers. The property is being screened within DOD and when the screening has been completed, appropriate certification will be submitted to GSA." Screening against defense requirments, *

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pursuant to Section III, supra, will then be completed and GSA notified of the result. If such screening results in the development of a requirement by one of the other military services, the Report of Excess will be withdrawn and the transfer of the property to the requesting military service effected. This specialized procedure for this type of property is adopted to allow screening for defense requirements by the Corps of Engineers to be accomplished simultaneously with the screening of civilian agencies by GSA. Where circumstances require that this type of property be screened within a limited period of time, the period should be specified and an explanation set forth on the face of the Report of Excess, as, for example: "Buildings are in the way of planned new construction and must be removed or demolished not later than (date). Accordingly, advice must be received on or before (date) as to whether a requirement exists for the property, or whether it is to be transferred or assigned to another Federal agency for removal within the time specified." If such advice is not received by the time specified, the property should be disposed of without further delay and GSA notified of the action.

11-51. Distribution of Report of Excess. Copies of the final Report of Excess (SF 118) will be distributed simultaneously as follows:

a. Complete copies to:

(1) Regional Office, GSA - original. and four copies

(2) District Engineer - one copy.

b. Division Engineer - one copy of the cover sheet (SF 118), and transmittal letter.

c. A complete copy, except Schedule C (SF 118c), to HQDA (DAEN-REP) WASH DC 20314 and one copy of the cover sheet to HQDA (DAEN-REM) WASH DC 20314.

d. Where family housing is involved, one copy of the cover sheet and the pertinent schedules A and B to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, DC 20301.

11-52. Notice of Receipt. GSA should promptly notify the holding agency of the date of acceptance of each Report of Excess (SF 118). The date GSA will assume the expense of cost and custody as provided in section VI, infra, will be figured from this date.

11-53. Withdrawals or Corrections of Reports of Excess. *

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a. Subject to the approval of GSA, and to such conditions as GSA considers appropriate, Reports of Excess may be withdrawn or corrected at any time prior to disposition of the property, by filing a corrected SF 118 with the regional office of GSA. Corrections and withdrawals will bear the same number as the report of excess to which they pertain, but will bear a letter suffix beginning with "A" for the first correction or withdrawal and continuing in alphabetical sequence for succeeding corrections or withdrawals. "Correction: will be conspicuouslly stamped on the face of the SF 118 for both withdrawals and corrections. Distribution of requests for withdrawal or correction will be the same as that made of the Report of Excess to which the withdrawal or correction pertains.

b. Property which is reported to GSA for disposal will not be withdrawn without the prior approval of HQDA (DAEN-REM) WASH DC 20314, nor will return of the SF 118 be accepted without the approval of DAEN-REM. (See Section IV, supra, concerning prior approval of DOD for withdrawals from excess of real property having an estimated fair market value in excess of $50,000.)

11-54. Supply of Forms. SF 118, l18a, l18b, and 118c, are not available in normal Adjutant General supply channels. The forms should be procured from GSA.

11-55. Reserved.

11-56. Reserved.

11-57. Reserved. *

* SECTION VI. CARE AND CUSTODY OF EXCESS AND SURPLUS PROPERTY

11-58. Procedures and Responsibilities for Care, Custody, Accountability, and Maintenance.

a. Department of the Army Military Property. Care, custody, accountability, and maintenance of excess Army military real property will be as prescribed in AR 405-90.

b. Department of the Army Civil Works Property. DEs will retain custody and accountability of all excess civil works real property under their jurisdiction until final disposition is effected.

c. Department of the Air Force Property. Pursuant to AFR 87-4, the Department of the Air Force is responsible for care and custody of excess Air Force real property. However, upon request by the Air Force DEs may assume custody if no costs are involved, or where cost is involved if funds therefor are furnished upon request by the DE.

d. Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and Other Federal Agencies. Where the Corps of Engineers is acting as real estate agent for other Federal agencies, DEs, at the request of the agency, may assume care and custody of excess real property on a reimbursable basis.

11-59. Guidelines for Protection and Maintenance of Excess and Surplus Real Property. Detailed guidelines are provided in FPMR Subsection 101-47.4913.

a. Calculated Risk. These guidelines, which are binding on holding agencies, embody the principle of calculated risk. In applying this principle, the anticipated losses and deteriorations, including pilferage and vandalism, in terms of realizable values are expected to be less than expenditures to minimize the risks. Normally, where property is of little value, only periodic surveillance is necessary and care and custody forces will not be maintained. However, where property, regardless of realizable value, is potentially an attractive nuisance to children and curiosity seekers, or is inherently dangerous, the public should be protected by guards stationed on the property or by other satisfactory means. Every effort should be made to minimize the cost of care, protection and maintenance consistent with these principles.

b. Improvements or Alterations. FPMR Subsection 101-47.401-5, provides that improvements and alterations to excess and surplus real property may be considered, with the prior approval of GSA, where disposal cannot be made. However, it is not considered likely that a situation will arise in the Corps' disposal operations where such improve- *

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ments or alterations can be justified. Repairs necessary for protection and maintenance of marketable property will not be undertaken except to prevent serious loss to the Government. Excess equipment or facilities should not be updated or improved. At predisposal conferences, or earlier where practical, the DE, in coordination with GSA representatives, will furnish specific guidance to the using command as to the minimum acceptable GSA requirement for care and custody. The requirement for minimum maintenance does not extend to historic places. Historic places in excess or surplus status will be maintained in accordance with the letter and spirit of approved Department of the Army criteria for protection, preservation and maintenance of historic places.

11-60. Transfer of Custody to General Services Administration (GSA).

a. Custody of an excess installation reported to the GSA for disposal will continue to be held until GSA transfers to its purchaser or other designee. All expenses pertaining to care, custody and maintenance will be borne by the holding department or agency, except that such expense for property reported to GSA for disposal and not disposed of within 12 months from the date the formal report of excess was received by GSA, shall be assumed by GSA as of the first day of the succeeding quarter of the fiscal year. GSA will give notice of the receipt of the report of excess and will, within 15 days, furnish advice on the acceptability of the report. (See FPMR as amended, Subsection 101-47.202-10.) Any request made to the disposal agency to defer disposal action, or failure to submit an acceptable report, will extend the obligation of the department with respect to expenses for care and custody caused by such deferment. In the event the department is not relieved of custody within the period for which it is obligated to stand the expense thereof, the retention of care and custody thereafter will be reimbursed by the disposal agency. Because of the magnitude of custodial expense for larger installations and the longer periods of time often consumed in effecting their disposal, it is imperative that reports of excess be made as promptly as possible in order that the 12-month period may commence and terminate as soon as possible and the department's expense minimized.

b. The DE will maintain close liaison with GSA with a view to obtaining prompt transfer of custody and accountability from the department to that agency, and will coordinate transfers between the using service and GSA. However, DEs will not take over custody of an installation or coordinate the transfer of custody until a statement of clearance or a statement that such clearance is not necessary because of the use of the installation has been furnished. Under GSA procedures, the department generally retains the responsibility for care, custody, and accountability of its excess facilities until final disposition *

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is made by GSA. Until that time, the property is to be carried on the real property inventory of the department.

11-61. Contracting for Care and Custody. Care and custody of excess and surplus installations should be performed by contract whenever it is legally possible and more economical to do so. Due to the temporary nature of such services and the extreme variations in kind and fluctuations in quality of such services required from time to time, contracting for custodial service will often prove to be more economical and efficient. In contracting for such services which include watchman, patrol and protective services, attention is invited to the prohibition against hiring detective agencies pursuant to the following Act of Congress: "*** An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia. "(5 U.S.C. 3108). This has been construed to apply to employees of organizations which provide the services of a detective agency, but not to organizations which are organizations to render watchman, patrol or protective services and do not include detective services as one of their funtions (26 Comp. Gen. 303). Custodial and protective services referred to herein are the type ordinarily procured by contract by GSA and other Government agencies charged with the responsibility for care and handling of excess and surplus real property pending its disposal in accordance with the FPMR.

11-62. Care and Custody through Interim Use.

a. General. Upon receipt of inital information that real property is excess, the DE should promptly initiate planning for interim productive use. Interim use should be planned to save care and custody expense but must not interfere with, delay, or retard transfer of the property to another Federal agency or its dispsal otherwise. Any permit or lease must have the prior approval of GSA, and shall be for a period not exceeding one year and shall be revocable on 30 days' notice (FPMR Sections 101-47. 203-9 and 101-47. 312).

b. Permits to other Federal Agencies. Interested Federal agencies will be afforded a priority in the interim use of excess and surplus real property. The permit will require the Federal agency to perform care and custody and perform routine maintenance. 41 CFR Section 101-47.203-8, provides for temporary assignment, conditional transfers, and rental or user charges for use of excess property by Federal agencies.

c. Leases for Non-Federal Use. Leases of excess and surplus property are made under authority of the Federal Property and Administrative Services Act of 1949, as amended and AR 405-80. Such leases are subject to the Economy Act (40 U.S.C. 303b), and must be *

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for a money consideration only. The lessee can and should, however, be made responsible for ordinary maintenance and restoration as required by standard Corps of Engineers lease forms. Where a portion of an excess or surplus installation is leased, it may be advantageous to enter into an agreement with the lessee for care and custody of the remainder. The agreement cannot provide for a reduction of rental for the portion leased. The Economy Act may not apply in some cases where industrial plants are determined excess subject to the National Security Clause or similar recapture conditions. Such cases should be coordinated with DAEN-REM on an individual basis.

11-63. Reserved.

11-64. Reserved.

11-65. Reserved. *

SECTION VII. RETURN OF PUBLIC DOMAIN LANDS AND LANDS OBTAINED ON A TEMPORARY BASIS FROM ANOTHER FEDERAL AGENCY

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11-66. Procedure for Disposal of Public Domain Land

a. Lands withdrawn or reserved from the public domain, together with Government-owned improvements, which have been determined to be excess to the department, after screening with other DOD agencies and the U.S. Coast Guard in accordance with Section III of this chapter, will be procesed for disposal in accordance with 43 CFR 2370-2374 and paragraph 11-71 hereof. The DE will file a Notice of Intention to Relinquish as provided by 43 CFR 2372.1. The notice will be filed in the Bureau of Land management (BLM) Land Office having jurisdiction.

Excess buildings and improvements on the property should be left in place and no disposal action taken thereon pending further instructions from BLM, unless it is determined that they should be abandoned in accordance with the procedures set forth in Section XI of this chapter. A copy of the Notice of Intention to Relinquish submitted to the appropriate BLM Land Office will be transmitted to HQDA (DAEN-REM) WASH DC 20314 and to the appropriate GSA regional office.

b. If any restoration, or other work, is proposed to be performed on the land, the matter will be forwarded to DAEN-REM for prior approval. Where the DE recommends disposition of the land by GSA as excess property rather than return to the public domain, no restoration of the property will be proposed (see 43 CFR 2372.1). Generally, lands which are unimproved, or contain only minor improvements, will be recommended for return to the public domain. Exception to this procedure should be made where development surrounding, or in the vicinity of the land, has changed its character, although the land itself has not been improved. Another exception would be the situation described in paragraph 11-40d supra. Generally lands which are extensively improved will be recommended to BLM for disposal. as excess property.

c. If the authorized officer of BLM determines, pursuant to 43 CFR 2372.3, that the conditions prescribed by that regulation have been met and that the land is suitable for return to the public domain, he will notify the DE, as the representative of the holding agency, that the Department of the Interior accepts accountability and responsibility for the property. A copy of this notification will be furnished to HQDA (DAEN-REP) WASH DC 20314.

d. If the authorized officer of BLM determines, pursuant to 43 CFR 2374.1, that the land is not suitable for return to the public domain because it is substantially changed in character, and GSA concurs in this determination, he will notify the DE to report the land and *

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improvements, with or without minerals, to GSA as excess property. Upon receipt of this notice, the DE will advise DAEN-REP and report the property to GSA on SF 118, Report of Excess Real Property, including the information on claims and encumbrances furnished by BLM under 43 CFR 2374.1 (c). The holding agency has the same responsibility for care, custody, and accountability of excess public domain as for other property reported to GSA for disposal.

11-67. Formal Revocation of public Land Withdrawals and Reservations. When the authorized officer of BLM determines that the land is suitable for return to the public domain, the BLM Land Office will transmit to the DE a draft of public land order (PLO) designed to formally revoke the order or reservation which withdrew or reserved the land. The DE will review the draft PLO for accuracy and return it unsigned. The draft PLO will be transmitted through BLM channels to DAEN-REM for signature of the Secretary of the Army or Air Force and return to the Washington office of BLM.

11-68. Cancellation of Permits.

a. Land obtained by permit, or some other form of instrument, from another Federal agency on a temporary basis which has not been substantially improved while being utilized by the Department, when determined to be excess in accordance with the procedure set forth in Section II of this chapter, will be returned to the Federal agency from which it was obtained.

b. When it is determined by the DE that land obtained by permit, or other form of instrument, from another Federal agency on a temporary basis has been substantially improved while being utilized by the Department, the DE will request DAEN-REM to determine whether the land is excess, or is expected to become excess, to the requirements of the agency from which it was obtained.

(1) If the ageny from which the land was obtained advises that the land is excess, or is expectd to become excess, to its requirements, the improvements will be reported to GSA on SF 118 in accordance with the procedure described in Section V of this chapter, with a statement that the agency from which the land was obtained has advised that the land is excess, or is expected to become excess to its requirements, and that the agency will be or has been requested to reassume administrative control over the land. Coincident with the report of excess, action will be initiated to return the land to the agency from which it was obtained. *

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(2) If the agency from which the land was obtained advises that the land is not excess, and is not expected to become excess to its requirements, improvements constructed thereon while the property was being utilized by the Department will be disposed of in accordance with the provisions of paragraph 11-71 infra. Where the improvements are substantial, and cannot be utilized effectively by the agency from which the land was obtained, and it appears that the best interests of the Government may not be served by disposal of the improvements for removal from the site, a report, with recommendations, should be forwarded to DAEN-REM for a determination whether the permit and improvements should be reported to GSA for disposal, or whether other action would be appropriate.

c. The Chief of Engineers, or his duly authorized representatives, will execute and deliver necessary papers effecting the relinquishment of permits and the transfer of real property to other Federal agencies when the installations to which such real property or permits pertain have been determined to be excess. However, where permits were obtained at local level, DEs will effect relinquishment in the same manner. Unless otherwise instructed, no action will be taken by the DE to restore or return the lands pertaining to an industrial installation to the agency which granted the permit. DEs will, however, submit the report required in paragraph 11-69, infra.

d. Where an installation embraces lands acquired in fee by a military department and lands acquired for temporary use from other departments or agencies, and if return of the latter type of lands to the department or agency which granted the permit would destroy the integrity of the installation or affect its ultimate disposal as a unit, a report will be made to DAEN-REM with recommendations that they will provide disposition instructions.

11-69. Procedure for Cancellation of Permits.

a. When permitted land is excess and the permit is to be executed, the DE will submit the following information with his recommendations to DAEN-REM:

(1) Description and location of the property;

(2) Date use was acquired;

(3) Department agency from which acquired;

(4) Manner of acquisition; that is, by permit or other means, with copy of document; *

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(5) ENG Form 1440-R, Cost of Restoration (Engineer Estimate and Appraisal), which includes a statement of cost and value of improvements or structures placed on the lands by the department;

(6) Statement of restoration work performed by the department if any;

(7) Statement of local representative of owning agency as to whether restoration will be required, or, where restoration work has been performed, whether such restoration is satisfactory; and

(8) Statement that no clearance of explosives or other harmful elements is necessary because of the manner in which the land was used, or, if otherwise, statement of clearance action taken or necessary.

b. Upon receipt of the foregoing information, the Chief of Engineers will effect relinquishment of the land by letter. Where the DE has authority to relinquish the land as outlined in paragraph 11-68c, he will effect relinquishment by letter addressed to the permittor, with a copy to DAEN-REM.

11-70. Restoration of Lands Made Available by Other Government Agencies.

a. Requirement. Where the Department retransfers real property, the use of which has been obtained from other Federal agencies (including withdrawals from the public domain recommended for return to the public domain) by means of use permits, public land orders, or other methods, the property should be restored to a condition as good as that which existed at the time the department took possession, damages by the elements or by circumstances over which the Department has no control excepted, unless the agency from which the property was obtained expressly waives restoration. Restoration of public domain land will not be initiated until the determination is made that the land is suitable for return to the public domainPublic domain land that is to be reported excess to GSA will not be restored. The procedure enunciated in Section XIII of this chapter relative to neutralization of unexploded bombs or artillery projectiles located on leased premises applies with equal force to Government-owned lands returned to other Federal agencies and to public domain land that is to be reported as excess for disposal by GSA.

b. Authority. The report of the Senate Appropriations Committee on the DOD Appropriation Bill, 1966 (Senate Report 625, 89th Congress, dated 18 August 1965), contained the following language: *

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"Such funds as may be required may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies."

The Comptroller General considers the foregoing to be a clear expression of Congressional intent, and that authority exists for the Department of the Army to restore (or make payment in lieu thereof) lands of other Federal agencies which have been damaged by the Army while being used under agreement.

c. Determination of Restoration Costs. ENG Form 1440-R, Cost of Restoration, appropriately modified, will be used for the preparation of an estimate of cost of restoration, or salvage or market value, for the purpose of determining the cost of restoration.

d. Payments for, or in Lieu of Restoration.

(1) Work Performed by the Department of the Army. If the work is performed by the Department, payment will be made from funds available to the office performing the work.

(2) Work Performed by Controlling Agency. If the work has been performed by the agency having administrative control over the property, pursuant to agreement with the Department, reimbursement to that agency may be made by properly supported SF 1080, Voucher for Transfer Between Appropriations and/or Funds, from funds available to the DE.

(3) Payment in Lieu of Restoration. If the work has not been performed by either agency and a payment is desired in lieu of restoration, the payment is, in effect, an advance of funds. As such, the advance of funds will be accomplished in OCE, based on controlling agency of SF 1080 properly supported.

11-71. Disposal of Buildings and Other Improvements. Where improvements have a net salvage value and are not to be reported to GSA for disposal with the land, the permitting agency, or Department of the Interior in the case of public domain land, will be required to reimburse the Army for their net salvage value, or the buildings or improvements will be disposed of in accordance with Section XI of this chapter.

11-72. RESERVED.

11-73. RESERVED.

11-74. RESERVED. *

SECTION VIII. PREDISPOSAL ACTION

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11-75. Record of Excess Classification. The DE will establish record on ENG Form 836A, Real Property Disposal Report, of the excess classification of each Army property and each Air Force property for which a preliminary or final real estate directive has been issued (Chapter 14 of this handbook).

11-76. Utilization for Other Needs. The DE will determine the feasibility of utilizing each installation classified as excess to fulfill current directives for acquisition of real estate or known or foreseen potential needs of the Army or Air Force, which may have been generated since the screening process. If redistribution for this purpose is deemed advantageous, recommendations will be submitted to HQDA (DAEN-REM) WASH DC 20314 on the proposed action, indicating when excess status was determined and by which element of the Departments of the Army or Air Force.

11-77. Suspension of Acquisition Action on Installations Proposed for Disposal. When a fee-owned installation is recommended for excess by the installation commander, or a preliminary or final real estate disposal directive is issued by the Air Force, any pending acquisition in connection with the installation will be suspended, unless the directive provides otherwise. A recommended plan for curtailment of uncompleted acquisition will be submitted to HQDA (DAEN-REA-L) WASH DC 20314. The plan will include the following information: Identification by tract numbers, names of owners, and area of each tract for which an option has been accepted or a declaration of taking filed, but as to which it is considered practicable and economical to obtain cancellation of the option or a stipulation for dismissal of the condemnation proceeding and revestment of title. Specific information as to the extent and nature of demolition of improvements, new construction, or other damages or changes made by the Government to the premises, and the probable cost of restoration in case of such cancellation or stipulation, will be included. Pertinent public relations aspects should also be covered. Generally, tracts on which a declaration of taking has been filed will not be returned to the owners by stipulation for amendment or dismissal of the condemnation proceedings. Exceptions to this may be recommended when shown to be in the best of interest of the United States.

11-78. Army Military - Screening, Clearance, Preliminary Report of Excess, Except where an E.O. 11954 Survey has been made. Upon receipt of a copy of the installation commander's recommendation of excess, the DE will take the following actions:

a. Immediately notify DAEN-REM by teletype, furnishing a brief statement of the real estate included in the recommendation. *

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b. Promptly screen the property against Army and other defense requirements if required by and in accordance with Section III of this Chapter, and advise DAEN-REM of the results.

c. As soon as the screening message is dispatched under b above, or immediately upon receipt of a disposal directive from DAEN-REM when screening is not required by Section III, DEs will prepare and forward:

(1) SF 118, Report of Excess Real Property and other documentation required in reporting the excess property to GSA.

(2) ENG Form 2187-R, Disposal Report (Figure 11-2), for clearance with DOD and the Armed Services Committees (ASC) of Congress where required in accordance with Section IV. This should be forwarded to DAEN-REL within three weeks of dispatch of the screening message, or receipt of the disposal directive. This schedule will allow the Chief of Engineers to process the disposal assembly through the DA and DOD secretariats and to obtain necessary clearances from the ASC. DAEN-REM will furnish the DE copies of the DOD approval and the report to the ASC. This office will also furnish copies of the ASC report to the Washington and regional offices of GSA, to permit screening with other Government agencies.

d. DOD approval of the disposal (property having estimated value in excess of $100,000) signifies the property is excess to Defense requirements. Upon receipt of this approval, the DE will forward a preliminary Report of Excess to GSA by transmitting necessary copies of the completed SF 118, with attachments, carefully identified as preliminary. Where screening is negative for property having an estimated value of $100,000 or less, the property is considered excess to Defense requirements and a final report of excess should be forwarded promptly to GSA.

11-79. Army Military - Modified Predisposal Procedures where E.O. 11954 Surveys have been made.

a. DEs will be advised of military installations to be surveyed under E.O. 11954 by a DOD or GSA survey team.

b. If property is to be declared excess as a result of a decision by the Department of the Army, appropriate commanders and DEs will be advised. The major commander will be requested to submit a Report of Excess pursuant to AR 405-90 to HQDA (DAEN-REM) WASH DC 20314 within 15 days. DEs will be furnished a copy of the report. *

c. Upon receipt of advice that property will be excessed, the DE, in coordination with the installation commander concerned, will commence preparation of ENG Form 2187-R, if required, for submission to DAEN-REL.

d. When the Report of Excess is approved, DAEN-REM will advise the DE and will request that screening be initiated. The approved report will be promptly referred through channels to the DE for further appropriate action.

e. The ENG Form 2187-R will be forwarded to DAEN-REM not later than 15 days after receipt of the approved Report of Excess.

f. As soon as the areas to be excessed are clearly defined, action will be initiated to assemble all necessary data so that the final SF 118 may be submitted to GSA within 30 days after necessary Congressional clearance is obtained under 10 U.S.C. 2662.

g. When the estimated value of the property does not exceed $100,000 and preparation of an ENG Form 2187-R is not required, the DE, upon being notified of the approval of the Report of Excess, will notify DAEN-REM of the date the SF 118 will be submitted to GSA.

11-80. Executive Order 11954 Surveys of Civil Works Properties. Procedures to be followed by DEs when civil works properties are surveyed by GSA under E.O. 11954 are contained in Chapter 8 of this pamphlet.

11-81. Predisposal Conference.

a. Where a substantial Army installation, or portion thereof, is involved, the DE will convene a predisposal conference with representatives of the using command, GSA, and other interested parties. Where an Air Force installation is involved, the Major Air Command will take the initiative in convening the conference. In any cases involving flying facilities, Federal Aviation Administration representatives will be invited. The agenda of the predisposal conference should provide for:

(1) Determinations on maintenance guidelines based on probable future uses of the property with emphasis on agreements concerning responsibility for assumption of care and custody, in accordance with AR 405-90, AFR 87-4, and Section VI of this Chapter.

(2) Review of the SF 118 to assure its acceptability to GSA.

(3) Review with GSA, when appropriate, of the advisability of transferring custody and maintenance responsibilities to GSA at an early date. *

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(4) Planning for and, to the extent possible, making definite determinations on interim utilization pending disposal by GSA.

b. It is of utmost importance that excess installations be put to productive use as military operations are phased out. This will do much to lessen the impact of the installation's closing on the economy of the local community. For this purpose, installations, in many cases, will be reported to GSA prior to phase out of military operations. In these cases, the DE has responsibiliy to insure, to the extent practicable, that other productive use is phased in as military operations are phased out. This can be accomplished only by careful planning and continuous coordination by the DE with using command and GSA. The using command will plan and execute the military phase out. However, the DE will assure that the Report of Excess to GSA specifically identifies and excludes the real and personal property to be retained by the military department. This information is required by GSA for disposal purposes.

c. A report on the predisposal conference will be forwarded to DAEN-REM. Any difficulties indicated by GSA will be summarized in the report, along with any other problems encountered or foreseen.

d. When requested, and on an individual project basis, the DE will prepare a real estate disposal study concerning the transfer of custody and maintenance responsibilities to GSA prior to final disposal. This study will be developed in conjunction with appropriate using command and GSA representatives. Its purpose will be to determine whether the transfer of the excess property to GSA would be more economical and in the best interest of the Government. Important benefits to DOD agencies would be reduction in expenditures and personnel of the military departments for such functions. Copies of the study will be furnished the using command concerned for timely review and recommendations.

11-82. Air Force - Preliminary Report of Excess. The DAD will issue a preliminary real estate disposal directive when a disposal project is forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for clearance. (Air Force screens its own properties for other defense requirements and clears the disposal with DOD and the Armed Services Committees of the Congress.) When the preliminary real estate disposal directive is received, the DE, unless directed otherwise, will proceed to perform all necessary actions in coordination with the installation commander concerned, for submission of a preliminary Report of Excess to GSA.

11-83. Final Report of Excess to GSA. Where a prelimary Report of Excess is made to GSA, the DE will promptly finalize the report upon receipt to the final Air Force disposal directive. In all cases where a disposal is reported to the Armed Services Committee, the DE will furnish *

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HQDA (DAEN-REM) advice when the final report is made to GSA. Where the report is finalized by statement confirming a preliminary report as final, copies of the preliminary report and confirming statement should be distributed in accordance with Section V of this Chapter. Distribution of preliminary Reports of Excess, except to GSA, will not be made in other cases.

11-84. Protection of Disposal Information. To Prevent premature disclosure to the public, information on and plans for disposal of all or a portion of an installation should be protected (AR 340-16), until such time as the property is determined excess to Army or Air Force requirements. (The Air Force preliminary real estate disposal directive is not issued until a determination has been made that the property is excess to Air Force requirements.) After determinations of excess are made, it is desirable that information on the availability of the property for disposal be widely disseminated. "FOR OFFICIAL USE ONLY" marking on plans and correspondence pertaining to the excess action may be cancelled by any recipient or holder. Where the classification "CONFIDENTIAL" or higher has been used, documents must be declassified in accordance with AR 380-5.

11-85. Coordination on Disposal Problems. If any major change or problem requires a significant revision in the time schedule for disposal, prompt action will be taken to advise offices concerned. HQDA (DAEN-REM) should be promptly informed of any problem adversely affecting a specific disposal project or the overall program for disposal or property.

11-86. Assignment of Personnel to Administer. To extent appropriate according to the circumstances and nature of the property, the DE will assign a responsible representative to each installation, or group of installations, to act under his staff supervision in performance of the following functions:

a. Monitoring and expediting the actions described by this Section and maintaining close liaison with GSA on disposal problems and actions.

b. Monitoring and expediting performance of such demolition, dismantling or other construction work as may be authorized.

c. Administration, operation and maintenance of the excess installation until final disposal, making every effort by consolidation of activities and otherwise to reduce the costs consistent with economic management of the facilities.

d. Coordination of ultimate transfer of assumed custodial responsibility to other agencies or persons as directed. *

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11-87. RESERVED.

11-88. RESERVED.

11-89. RESERVED. *

SECTION IX. DISPOSAL OF FEE-OWNED REAL PROPERTY AND EASEMENT INTERESTS

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11-90. Authorities (General).

a. Statutory Authorities. Power to dispose of real estate belonging to the United States is vested in Congress (paragraph 2, Section 3, Article IV, Constitution of the United States), and no real estate of the Department will be sold or otherwise disposed of without authority of Congress. By the Federal Property and Administrative Services Act of 1949 (Federal Property Act), (Public Law 152, 81st Congress; 63 Stat. 377) as amended, (40 U.S.C. 471 et seq.), Congress provided authority for utilization of excess property and the disposal of surplus Federal property, and established the General Services Administration (GSA) to administer the provisions of that Act. All excess and surplus Federal real estate and real property components will be disposed of under authority of the Federal Property Act, as amended, unless other statutory authority for such disposal is specifically withheld under the provisions of the Act or enacted subsequent thereto. In connection with disposals made under statutory authority other than the Federal Property Act, attention should be given to the purposes of the legislation and insofar as practicable, disposal of property should be in accordance with the provisions of the Act and the regulations issued thereunder, in order that the greatest overall efficiency and economy be effected.

b. Rules and Regulations.

(1) Issued by the GSA. Rules and regulations issued by the GSA to effectuate its authority in respect to disposal of real estate and real property components are contained in FPMR, Section 101-47, as amended, including disposition of timber, embedded sand, gravel and stone, buildings and other structures, and leaseholds and other rights to use or occupy real estate. The DE will be governed by these rules and regulations. GSA also issues, from time to time, special delegations of authority to the Department of Defense with power of redelegation.

(2) Issued by the Departments. Policies and procedures of the departments with respect to the control, management, maintenance, and disposition of real estate and real property components located within the continental United States and its territories and possessions, placed in excess status or to be placed in excess status are contained in AR 405-90, AFR 87-4, and AR 405-5/AFR 87-15, except Army civil works property which is governed by this handbook.

c. Authorities Delegated to the Department of Defense. Under the publications and special delegations issued by GSA, the Department of Defense has been designated disposal agency categories enumerated in paragraph 11-4 supra. *

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d. Authorities Delegated to the Army and Air Force. Department of Defense Directive 4165.6, among other things, redelegates to the Secretaries of the Army, Navy and Air Force, and to such individuals as they may designate for the purpose of administering real estate actions within their respective departments, the authorities which were then, or may hereafter be, assigned and delegated to, or vested in the Secretary of Defense by:

(1) Sections 401 and 402 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 511 and 512) and regulations of the GSA promulgated thereunder.

(2) The Administrator of General Services, pursuant to Section 203(a), (b) and (c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 484).

(3) Other specific delegations from the Administrator of General Services.

e. Authorities (Special). In addition to the general authority cited in paragraph (2) above, the Department derives authority from a number of special purpose statutes to transfer real property to other Federal agencies and to dispose of real property for special purposes, or to special classes or in a specific manner to achieve a specific objective. Some of these acts are utilized in conjunction with regulations of GSA and some are exercised independently thereof according to the nature of the particular law. These laws are described in subsequent sections of this handbook.

11-91. Transfers - General. Resumes of the principal legislative acts authorizing transfer of Army and Air Force real property to other Federal departments are contained in succeeding paragraphs. The authorities in these acts are exercised independently of GSA regulations. Transfers under these authorities are made without reimbursement. Real property can also be retransferred under the Federal Property Act within the scope of disposal authority delegated by GSA. Transfers under the Federal Property Act are subject to reimbursement as prescribed by FPMR, section 101-47.203-7. Property reported to GSA for disposal will be transferred only at the direction of GSA. Exceed property excepted from reporting may be transferred by the DE under GSA regulations. Transfers to the Department of the Interior of surplus lands

11-92. Transfers Among the Armed Services. 10 U. S. C. 2571(a) authorizes the interchange without reimbursement of military stores, supplies, and equipment of every character, including real estate *

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owned by the Government, between the Army, Navy, Air Force and Coast Guard upon request by the head of one service and with the approval of the head of the other service.

11-93. Transfers to Tennessee Valley Authority. 10 U. S. C. 831f(b) authorizes the President of the United States to provide for the transfer to the Tennessee Valley Authority of the use, possession and control of such real or personal property of the United States as he may from time to time deem necessary and proper for its purposes. This authority is applicable to property under the jurisdiction or control of the Secretaries of the Army and the Air Force. The authority vested in the President by this law has been delegated to the Office of Management and Budget by Executive Order No. 10530 dated 11 May 1954, as amended (see footnote to 3 U. S. C. 301).

11-94. Transfers to Federal Prison Industries, Inc. 18 U. S. C. 4122 authorizes any department or agency of the Department of Defense to transfer without exchange of funds, to Federal Prison Industries, Inc., any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under subsection (d) of this Act. The provisions include the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any DOD agency or department.

11-95. Transfers to Veterans Administration. 38 U. S. C. 5003 authorizes the secretaries of the military departments to transfer, without reimbursement, to the Veterans Administration, facilities, supplies, equipment, or material necessary and proper for the authorized care of veterans. The word "facilities," as used in this Act, has been construed to include buildings and grounds.

11-96. Transfers to Secretary of Transportation and the National Weather Service. 49 U. S. C. 1157 authorizes the Department of Defense to transfer, without charge, to the Secretary of Transportation, airport property and airway property, exclusive of meteorological facilities in territory outside the continental limits of the United States (including Alaska). Section (b) of this Act, similarly authorizes transfer of meterological facilities, without charge, to the National Weather Service.

11-97. Transfers to District of Columbia. 40 U.S.C. 122 authorizes Federal and District authorities administering properties within the District of Columbia, owned by the United States or by the District, to transfer jurisdiction over parts or all of such property among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon, provided that, prior to the consummation of any such transfer, the proposed transfer shall be *

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recommended by the National Captial Planning Commision. All such transfers and agreements shall be reported to Congress by the District authorities concerned.

11-98. Interchange of National Forest and Military and Civil Works Lands. 16 U.S.C. 505a, 505b authorizes the Secretary of Agriculture, with respect to national forest lands, and the Secretary of a military department with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a national forest, to interchange such lands, or parts thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and provide maximum use thereof, for authorized purposes. This law further provides that no transfer thereunder shall become effective until 45 days after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. The law also provides, in effect, that lands so transferred shall thereafter be subject only to the laws applicable to the lands of which the transferred lands become a part. Lands under the administrative control of the Congress, both military and civil, and that of the Air Force are within the scope of this law.

11-99. Procedures for Interchange of National Forest Lands.

a. General. The interchange of national forest lands is accomplished in three steps: first, aggreement must me reached between the two departments involved as to which lands will be interchanged; second, the two departments will jointly notify the Speaker of the House of Representatives and the President of the Senate, by letter, of the intention of the two departments to make the interchange agreed upon; third, upon the expiration of 45 days from the date of submission of the notice of intention (counting only days occurring during any regular or special session of the Congress) the two secretaries will execute jointly and cause to be published in the Federal Register an order transferring the respective lands of each department to the other.

b. Initiation of Requests for Interchange. Requests for interchange of lands may be originated by either the military department involved or the Department of Agriculture. Those originated by the Department of the Army may result from land requirements generated by newly authorized civil works or military construction projects or from authorized expansion of existing projects or as a result of property utilization surveys.Department of the Air Force requirements may develop similarly. When a request originates with the Department of the Air Force requirements may develop similarly. When a request originates with the Department of Agriculture pertaining to a civil-works project or a military installation, it will be analyzed and coordinated by the DE with local representatives of the Department of Agriculture and *

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the using service, as appropriate, to determine the feasibility of and need for the acquisition of any forest land to improve administration of the Army project or installation and the availability of Army lands for transfer to the Department of Agriculture. When coordinated analysis indicates the propriety of an interchange, an interchange planning report will be developed by by the DE, in coordination with interested local elements of the two departments and submitted to HQDA (DAEN-REM) WASH DC 20314, with appropriate recommendations.

c. Contents of Interchange Planning Report. The planning report should include the following information:

(1) Location of the areas proposed for interchange, including the county or municipality, names of the forest, project or installation, and number of acres to be interchanged by each department.

(2) If the areas involved include public domain lands, the number and date of the Executive Order or Public Land Order by which withdrawn or established.

(3) If the areas include acquired lands:

(a) Approximate dates, methods and cost of acquisition of Department of the Army lands proposed for interchange.

(b) Interest, restrictions and reservations currently outstanding, to which the lands were subject when acquired, together with such rights subsequently granted by the Government and presently in force.

(4) Any additional reservations, conditions or restrictions under which the interchange is to be made.

(5) A map, in triplicate, indicating by appropriate color scheme the lands of each department which are to be interchanged. The map should show the jurisdictional boundary, and, where appropriate, the contour elevations used as a basis for determining the extent of the interchange.

(6) An informal estimate of the current values of the areas to be interchanged.

(7) Information upon which to base a determination by the two Secretaries that the interchange will facilitate land management and provide maximum use thereof for authorized purposes. *

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(8) Any other information or data that might be helpful to representatives of the Department of the Army in answering pertinent questions that may be raised by the committees of Congress.

(9) A draft of order of interchange prepared, in sextuplicate, in coordination with representatives of the Forest Service for execution jointly by the two Secretaries.

(10) Recommendations of the District and Division Engineers.

d. Relinquishment and Assumption of Possession. Upon notification by the Chief of Engineers that an order of interchange has been published, the DE will coordinate with local representatives of the Forest Service, and the using service if appropriate, the exchange of custody and accountability of the respective areas.

11-100. Procedure for Other Transfers.

a. Applicability - Exceptions. This paragraph and paragraphs 11-101 and 11-102 are applicable to all transfers of real and related personal property to other Federal agencies by the Army and Air Force except as provided above.

b. Authority to Execute.

(1) Secretaries of the Army and Air Force. Instruments effecting the transfer of fee-owned land (except fee-owned land that has been reported to GSA and is transferred at the direction of GSA) will be executed at Secretarial level. The Secretary of the Army, or his designee, will execute instruments transferring Air Force land to other Federal agencies.

(2) Divison and District Engineers will execute instruments transferring real property and related personal property to other Federal agencies: (a) which has been reported to GSA and which is transferred at the direction of GSA; (b) leaseholds, easements, and other lesser interests in lands; and (c) buildings, fixtures, and other improvements.

11-101. Form of Inter-Agency Transfer Instrument.

a. Inter-agency transfer instruments will be prepared by the Chief of Engineers in either memorandum or letter form. The instruments will be prepared for signature of the Secretary of the transferring department and will be addressed to the Secretary or head of the receiving department or agency. The instrument will provide, as a minimum, the following: citation of statutory authority for the transfer; statement as to whether the transfer is made with or without reimbursement; *

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statement of the reimbursement amount, if applicable; statement as to whether the requirements of 10 U.S.C. 2662 have been met or that the transfer is not subject thereto; statement as to the acreage of land involved; and, by means of an inclosure, a description of the property being transferred. Based on the circumstances and nature of the property, other appropriate data outlined below will be included in the instrument.

(1) Effective date of transfer (where right-of-entry has been granted or custody transferred, this date will be used.)

(2) Restrictions, conditions, reservations and exceptions, as necessary.

(3) When, where, how and by whom transfer of physical possession and accountability for the property will be accomplished.

(4) Location and proposed disposition of title papers pertaining to the property.

(5) Description of the land and copy of map depicting the property and reflecting its relation to retained property, if any, and to encumbrances such as rights-of-way, easements, and leaseholds.

(6) Instructions concerning payment of rent where a lease is involved. The transfer will be conditioned upon assumption of all obligations incurred in connection with the leasehold, including obligations to restore the premises.

(7) Instructions concerning removal and site restoration where buildings or timber, or sand and gravel or other separable property is involved.

(8) Statement of source of title and cost of acquisition where land is involved. Reservations and exceptions in and to the Government's title and easements and other rights in the property granted by the Government will be stated with particularity.

(9) List and description of buildings and improvements and cost of buildings and improvements not acquired with the land.

(10) Preference to excess or other directive making the property available for transfer when instrument is executed by District Engineer.

(11) Statement of responsibility and reimbursement for utility services. *

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(12) Reference to Report of Excess, Standard Form 118, where property has been reported to GSA.

(13) Other appropriate information.

b. The DE will provide the data outlined in a above to HQDA (DAEN-REM) WASH DC 20314 for use in preparing transfers to be executed at the Secretariat level. The forwarding correspondence will contain sufficient information for a full and complete understanding of the proposed transfer action, including an appraisal when reimbursement is required, together with other appropriate comments and recommendations.

11-102. Transfer of Custody and Accountability. The DE will transfer custody and accountability or will coordinate the transfer, as appropriate. The DE will collect any reimbursement and obtain any releases required. Where a leasehold is involved, the DE will furnish the transferee a copy of the lease and advice of the last rental paid and when the next rent is due. Upon completion of the transfer, proper notice will be given to the General Accounting Office, the lessor, and the Finance Officer as to the responsibility of the transferee for future rental payments. This action will be initiated or completed promptly upon receipt of a copy of the executed instrument, and a conformed copy thereof will be furnished to HQDA (DAEN-REP) WASH DC 20314.

11-103. Exchanges of Fee-owned Land and Easement Interests. The statutes identified in the following paragraphs authorize the exchange of Government-owned lands and interests therein for private lands and lands owned by states, other non-Federal agencies, and their instrumentalities. AS a general rule, any exchange of lands should be restricted to lands of approximately equal value. Where the Government property proposed for exchange has a value substantially in excess of the private land to be acquired, the question of whether the transaction is truly an exchange arises. In drafting relocation contracts, care must be exercised to insure that there is legal authority for execution of the conveyance or easement proposed.

11-104. MCA Acts. The annual military construction authorization acts usually contain general authority for the acquisition," by donation, purchase, exchange of Government-owned lands, or otherwise," of lands and interests therein at specified installations or for specified military proposes. The annual acts must be examined to determine that specific authority exists to acquire land by exhange, unless a contemplated exchange falls within the scope of one of the special laws mentioned in paragraphs 11-105 through 11-109.

11-105. Army Military and Air Force Lands - $50,000 Limitation. *

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a. 10 U.S.C. 2672 authorizes the Secretary of a military department to acquire land and interests in land by gift, purchase, exchange of Government-owned land, or otherwise, that:

(1) The Secretary or his designee determines is needed in the interest of national defense, and

(2) Does not cost more than $50,000.

b. 10 U.S.C. 2672a authorizes the Secretary of a military department to acquire any interest in land, including by exchange of Goverment-owned land, that:

(1) The Secretary or his designee determines is needed in the interest of national defense;

(2) Is required to maintain the operational integrity of a military installation, and

(3) Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

11-106. Army Civil Works Lands. The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately-owned lands required for such purposes (33 U.S.C. 558b and 558b-1).

11-107. For MCA Family Housing. The Act of 1 September 1954, Public Law 765, 83rd Congress (68 Stat. 1119), as amended by Sec. 415 of Public Law 968, 84th Congress, Act of 3 August 1956 (70 Stat. 1018) authorizes the acquisition of real estate by donation, purchase, exchange of Government-owned lands, or otherwise, for "Military Construction-Army Family Housing at Military Installations and Facilities."

11-108. Procedure for Exchange.

a. Each agreement for the exchange of real property should be formalized by written contract specifying the terms and conditions of the exchange, including, by reference to exhibits incorporated therein or otherwise, the form and terms of the conveyance of the title to the property to and from the Government. The agreement, in the case of relocation contracts, will be developed in accordance with ER 1180-1-1 (Sec. 73, ECI). Where an exchange of land or interests therein is considered desirable in the course of a condemnation proceeding, the agreement can be incorporate in a stipulation therein (Section IV, Chapter 5 of this handbook). *

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b. Submission to the Chief of Engineers of draft of conveyance.

(1) Conveyance will usually be executed by the Secretary or head of the agency involved (paragraph 11-131). To avoid impinging on his discretionary powers, the execution of any contract or agreement involving an exchange of real property interests must be approved in advancet be deferred pending execution of the conveyance, or provide that the terms and conditions of any grant to be made pursuant to the contract will be subject to approval by the Secretary or agency head. It is considered preferable that the contract contain a draft of conveyance as an exhibit thereto and, where time will permit, be submitted to DAEN-REM for review prior to final execution of the contract in order to avoid possible difficulties arising from subsequent disagreement over terms acceptable to the signatory of the Government's conveyance.

(2) In submitting for final approval and execution the conveyance of the Government's interest in land pursuant to a contract for exchange, the following data should be included to support the proposed action:

(a) Description and map of the property to be conveyed.

(b) Statement as to how and when the Government acquired title to the property, the nature and extent of its interest therein, and a statement of any encumbrance to which the property is subject and the nature thereof, such as easements for road rights-of-way, utility lines, etc.

(c) A sufficient number of drafts of the conveyance to permit distribution thereof to interested agencies and the grantee.

(d) Two copies of the contract, option, stipulation in condemnation or other agreement which provides for the proposed conveyance, or, in lieu thereof, pertinent excerpts therefrom sufficient to clearly show the nature and extent of the Government's obligation to execute the conveyance.

(e) A citation of the statutory authority on which the execution of the conveyance is to be predicated.

(f) Any additional information necessary to a proper understanding of the proposed transaction.

(g) When the exchange agreement is other than a relocation contract, an appraisal report showing the relative fair values of the properties to be exchanged. *

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(h) A copy of the conveyance to be made to the United States, or a statement by the Attorney General that an acceptable conveyance has been executed and delivered to the United States, and that an opinion of good title has been made or it not required by regulation to be made.

(i) Recommendations of the Division and District Engineers.

11-109. Public Law 87-852 Easements. P.L. 87-852, approved 23 October 1962 (76 Stat. 1129), authorizes executive agencies to grant easements on real property of the United States for rights-of-way or other purposes on terms and considerations deemed necessary to protect the interest of the United States, with or without monetary consideration, or other consideration, including any interest in real property. The Act also authorizes the relinquishment of legislative jurisdiction to the State.

11-110. Disposal of Property in which the Military Departments have a Continuing Interest Under Special Acts of Congress. General. Because of the continuing interest of the departments in the following properties and in view of the determinations under the Acts on which the disposals are premised, properties that can be conveyed under authorities discussed in paragraphs 11-111 through 11-114 are not considered surplus or excess within the meaning of these terms as defined in the Federal Property Act.

11-111. Highway Purposes. Title 23 U.S.C. 317 provides that upon application of the Secretary of Transportation, land or materials may be transferred to a state for the construction or maintenance of a right-of-way for any highway adjacent to a Government installation. If, within a period of four months after such application by the Secretary of Transportation, the Secretary of the Department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purpose for which such land or materials have been reserved, they may be appropriated and transferred to the state for such purposes. When the need for such land or material ceases to exist, they shall revert to the control of the department. This section applies only to projects constructed on a Federal-aid system, or under the provisions of Chapter 2 of Title 23 U.S.C. Usually applications for highway rights-of-way or the use of borrow material made under this Act by the Federal Highway Administration, Department of Transportation, on behalf of a particular state can be and are more simply satisfied by the issuance of a road easement or a license to take borrow material. This latter procedure is also desirable in that controls necessary to satisfy military requirements may be retained. Title 23 U.S.C. 107(d) directs Federal agencies to cooperate with the Secretary of Transportation *

in providing rights-of-way, including control of access, for the interstate highway system over lands and interests in lands owned by the United States.

11-112. Authorized Widening of a Public Highway, Street, or Alley.

40 U.S.C. 345c authorizes the conveyance, upon application, of such interest in real property as is determined will not be adverse to the interests of the United States, to the states or political subdivisions for authorized widening of a public highway, street, or alley. The conveyance may be made with or without consideration, and subject to terms and conditions deemed necessary to protect the interests of the United States. Excepted from this authority is the conveyance of any interest in real property that can be transferred under Title 23 of the United States code (see paragraph 11-111), and to public lands in the National Forest System.

11-113. Airport Development.

a. Authority. 49 U.S.C. 1723 provides that

"(a) ...whenever the Secretary of Transportation determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace. (b) Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used *

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in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall at the option of the Secretary, revert to the United States."

b. Approval. The requirement for approval by the President was waived by Executive Order 12079 dated 18 September 1978. The Attorney General delegated his authority to approve to the Assistant Attorney General, Land and Natural Resources Division, by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 22, 1971: 36 F.R. 20428). The instrument of conveyance must cite authority for the waiver and the delegation as shown in Suggested format of deed (Figure 11-3).

c. Requirements for Conveyance Instrument. Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department, the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it. *

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(4) That the grantee agrees that no personal shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination on the grounds of race, color, religion, aqe, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21) - nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(a) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(b) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(c) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed *

period. These notices many be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

(9) That, if any covenant condition in the instrument of conveyance, other than the covenant contained in paragraph 7 above, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(10) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

d. Procedure for Conveyance. Upon receipt of a deed from the District Engineer, DAEN-REM will submit the deed to the appropriate Secretary for execution, and to the Assistant Attorney General, Land and Natural Resources Division,for approval before returning it to the District Engineer for delivery to the grantee.

(1) The deed assembly submitted will contain, in triplicate:

(a) The request from the Administrator of FAA to the Secretary of the military department concerned;

(b) The reply from the Secretary involved to the Administrator, making the property available;

(c) The resolution by the appropriate governing body of the public agency sponsoring the project in question indicating authorization for acquisition by such agency and its concurrence with the terms and conditions of the conveyance.

(2) Transmittal correspondence shall also set forth:

(a) The type and condition of the property, including improvements acquired therewith or constructed since acquisition; *

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(b) Whether there has been any change in the nature, quantity, etc., of the property requested by the agency from the date of its original request to the present. If so, details should be furnished together with an appropriate amendatory resolution (in triplicate) by the governing body of the sponsoring agency;

(c) Expenses of transfer. In view of the provision in the Act that the conveyance will be made without any expense to the United States, if land surveys are required the transferee agency will be required to pay cost of making such surveys.

11-114. Development of Public Port or Industrial Facilities.

a. Authority. Section 108 of Public Law 86-645 approved 14 July 1960 (33 U.S.C. 578) authorizes the Secretary of the Army, after certain determinations are made, to convey land which is a part of a water resource development project to a state, political subdivision thereof, port district, port authority, or other body created by the State or through a conpact between two or more States for the purpose of developing or encouraging the development of public port or industrial facilities.

b. Limitation. Only lands within a navigation project will be made available for conveyance for these purposes.

c. Delegations, Rules, and Regulations. Pursuant to rules and regulations published in the Federal Register 11 March 1961 (26 F.R. 2117-2118; 33 C.F.R. 211.141-211.147),

(1) The Chief of Engineers or the Director of Civil Works has been delegated authority to determine:

(a) That the development of public port or industrial facilities on land within a project will be in the public interest;

(b) That such development will not interefere with the operation and maintenance of the project;

(c) That the disposition of the land for these purposes under this Act will serve the objectives of the project;

(d) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purpose for which the project was authorized; and

(e) The conditions, reservations and restrictions to be included in a conveyance under the Act. *

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(2) The District Engineer has been delegated authority to:

(a) Give notice of any proposed conveyance under the Act and afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase; and

(b) Determine the period of time in which applications for conveyances may be filed.

(3) Notice. The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (a) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within the state in which the available land is located and, if any agency of an adjoining state or states may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within such state or states, and (b) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

(4) Filing of Application. Any agency interested in the development of public ports or Industrial facilities upon the available land shall file a written application with the District Engineeer within the time designated in the public notice. The application shall state fully the purposes for which the land is desired and the scope of proposed development.

(5) Price. No conveyance shall be made for a price less than the fair market value of the land.

(6) Conveyance. Any conveyance of land under this Act for public port or industrial facilities will be by quitclaim deed in the form of Figure 11-5, executed by the Secretary of the Army.

d. Procedure.

(1) Proposals to convey land included in navigation projects for development of public port or industrial facilities will be forwarded by the District Engineer, through the Division Engineer, to HQDA (DAEN-REM), with recommendations, and with the information required by paragraph 11-19 of Section II, and such additional information as will enable the Chief of Engineers to make the determinations required under c above. *

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(2) Upon receipt of notification from the Chief of Engineers that the property is available for sale for development of public port or industrial facilities, the District Engineer shall give notice of such availability in accordance with c(3) above. The public notice will follow substantially the guide format in Figure 11-4.

(3) If two or more applications are received from eligible agencies, all applications, with recommendations, will be forwarded, through the Division Engineer, to DAEN-REM for the determination referred to in c(1) (d) above.

(4) Upon determination of the actual property to be included in a conveyance, the fair market value thereof will be established by an appraisal.

(5) Upon the acceptance of an application, negotiations will be conducted at the price established by the appraisal. However, the applicant will be advised that the price is subject to approval by the Secretary of the Army. This is necessary since the Secretary of the Army has not delegated his authority to determine the fair market value for conveyances under this Act. If public port facilities that can be used in connection with proposed industrial facilities have not been constructed in the vicinity, no disposal under this authority will be authorized which does not provide for construction of public port facilities.

(6) Upon completion of negotiations a quitclaim deed following the sample format in Figure 11-5 will be prepared and forwarded, through the Division Engineer, to HQDA (DAEN-REM) for execution by the Secretary of the Army, in accordance with the general procedure for submission of deeds for execution as outlined in paragraph 11-131.

11-115. Authority and Procedure for Disposal of Surplus Property by DA to Eligible Public Agencies. FPMR Section 101-47.303-2 provides that the disposal agency shall allow a reasonable period of time for states, municipalities, and their instrumentalities, to perfect a comprehensive and coordinated plan of use and procurement of surplus property in which they may be interested. This provision applies to surplus property that can be disposed of by negotiated sale under the special acts listed in paragraphs 11-118 through 11-122 for public highways, streets, and alleys under the Act listed in paragraphs 11-111 and 11-112, by transfer to the District of Columbia under paragraph 11-97, and under the individual agency negotiating authority of the Federal Property Act, (40 U.S.C. 484(e)3). A listing of the special acts, with the eligible public agencies, and some guides for classification of property for disposal are contained in FPMR, Section 101-47.4905. *

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11-116. Classification. Pursuant to FPMR, Section 101-47.303-1, any item of surplus land not reported to GSA for disposal under the provisions of Section V of this Chapter will be classified according to its highest and best use, e.g., industrial, commercial, agricultural, or for disposal under the special acts referred to above. Where required by the special acts, classification will be coordinated with the interested Federal agency. The classification will be recorded on ENG Form 1825 (Real Property Classification), with sufficient information to justify the classification. Surplus property may be reclassified from time to time whenever such action is deemed appropriate. Based on its classification, notice of the availability of surplus land for disposal will be given to public agencies eligible to procure such property as provided in the following paragraph.

11-117. Notice to Eligible Public Agencies. FPMR, Section 101-47.303-2 and Section 101-47.308-1, et seq., provide a procedure of formal notice to eligible public agencies of the availability of surplus land for disposal. Notices are not required for property having an estimated fair market value of less than $1,000, except where the disposal agency has reason to believe than an eligible public agency may be interested in the property. Notices as provided in this section will be given for all surplus airport property and surplus fee-owned land for which the Army is the disposal agency, that is classified for disposal under a special act, or if there is reason to believe that a public agency may be interested in acquiring the land by negotiation at its appraised fair market value under the Federal Property Act (40 U.S.C. 484(e) (3) (H).

11-118. Airport Property.

a. Eligible Transferees. The right to acquire surplus property without monetary consideration for airport purposes, under 50 U.S.C. 1622(g), with the approval of the Administrator of GSA, is limited to states, political subdivisions, municipalities and tax-supported institutions. This is the proper statutory provision governing transfers of entire military airports to state or local agencies for their use as public airports. The right of such transferees is subordinate to the priority of Federal agencies to acquire the property for their own use. Airport property will not be disposed of for any other non-Federal use until every reasonsable effort has been made to dispose of it for airport purposes.

b. Preliminary Procedures.

(1) Request a determination by the Administrator of the FAA that the surplus land is essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport as required by 50 U.S.C. 1622(g) (l). *

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(2) Upon receipt of a determination by the Administrator of FAA, furnish the FAA Regional Office with a description of the property, or a copy of the Standard Form 118 if the property has been reported to GSA for screening, together with a list of the operating and maintenance equipment available for disposal with the airfield, and request that a survey under the Surplus Property Act be made and that, based thereon, recommendations for classification of the property under the Act be furnished.

c. Classification. District Engineers are authorized to approve ENG Form 1825, Real Property Classification, based on FAA recommendations. Generally, the recommendations of FAA in regard to classification of property, will be followed, except the following will be forwarded to DAEN-REM without final classification action: cases involving reduction in land areas, runways, taxiways, etc.; controversial cases; and cases where changes in the reservations, restrictions, or conditions specified in the Act are recommended by FAA, District Engineers will not classify as airport property, property in excess of that recommended by FAA or property of which the highest and best use is determined to be industrial. Where the District Engineer does not agree with the report of FAA, he will immediately submit complete data setting forth all objections to the report, together with his recommendations, to DAEN-REM.

d. Notice of Availability. Upon classification of the property as airport property, notice of the proposed disposal will be sent by certified mail to the political subdivisions, or municipalities in which the property is located, and also to any other state, political subdivision, municipality, or tax-supported institution which the District Engineer has reason to believe may be interested in the property. A reasonable time will be allowed eligible agencies to submit an acceptable application. Figure 11-6 is a format for use in preparing the notice.

e. Advertising. The proposed disposal of airport property will be advertised in at least two newspapers of general circulation within the state in which the airport is located. This advertising will insure notification to political subdivisions, tax-supported institutions, and others that the property is available. Property not classified as airport property will be advertised in accordance with the applicable requirements for the type of property. However, the first advertising of non-airport property adjacent to an airport will contain a statement that the property may be acquired under Section 13(g) of the Surplus Property Act of 1944, as amended, for airport purposes, provided FAA approves such acquisition. *

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f. Form of Application. Public agencies desiring to acquire surplus airport property will be required to submit an Application For Airport Property (Figure 11-7). The application includes the provisions of Section 13(g) of the Surplus Property Act of 1944, as amended. If the applicant desires to enter and use the property prior to conveyance, such other terms and conditions considered desirable and necessary governing interim use of the property by the applicant will be included. The application will be signed by the applicant and forwarded to DAEN-REM for acceptance by proper authority in the Department. Evidence of the applicant's legal and financial ability to maintain and operate the property, as proposed, will also be submitted with the application.

g. Request for Modifications in the Provisions of Section 13(g) of the Surplus Property Act of 1944, as Amended. Should an applicant request modifications in the restrictions and conditions imposed by Section 13(g) of the Surplus Property Act of 1944, as amended, the application and all pertinent data, including the FAA report, will be forwarded to DAEN-REM. If the requested modification is approved, the case will again be referred to FAA for its recommendation. If FAA does not concur in the modification, the fact will be reported to DAEN-REM for further necessary action.

h. Personal Property. Non-industrial personal property of any other nature or description made available for disposal with an airport and located on it may be transferred with the airport on recommendation by FAA.

i. Meetings with Public Bodies. Close cooperation will be maintained with FAA, and its representatives will be invited to participate in negotiations with public bodies in connection with transfer of airport property.

j. Land Survey. In the event that a property survey is required to establish a correct metes and bounds description of the land to be transferred as airport property, a survey will be provided by the prospective transferee without cost to the Government.

k. Transfer Instruments. The type of instrument used in conveying or transferring the Government's interest will vary according to the type of property that may be involved, i.e., wholly Government-owned, mixed owned and leased, and leased property. However, instruments of conveyances will contain provisions required by the Surplus Property Act of 1944, as amended. Where a lease is involved and it is from other than the prospective transferee, such transferee will be required to obtain a long term lease on the land prior to conveyance of the Government-owned improvements. Execution of the lease to the *

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prospective transferee and acceptance of the application by the Government should be handled simultaneously. Figure 11-8 is a format of quitclaim deed covering fee-owned and leased land (Airport Property). A quitclaim deed can be used to surrender leased land and convey the improvements and related personal property, or this can be done by supplemental agreement to the lease or other type of contract as considered desirable in accordance with local conveyancing practices.

l. Recordation. All transfer instruments will be recorded by and at the expense of the transferee.

m. Compliance. The Administrator, FAA, is responsible for determining an enforcing compliance of conditions and restrictions contained in any instrument of disposal of airport property, and is authorized to reform, correct, or amend any such instrument for such action as deemed necessary by him under applicable law. Care will be exercised to furnish copies of the application, classification, and instrument of conveyance to FAA so that it can properly perform its compliance function.

11-119. Wildlife Purposes.

a. Authority. The military departments, when acting as a disposal agency, are authorized under the provisions of 16 U.S.C. 667b-d. in connection with land and improvements that: (1) can be utilized for wildlife conservation purposes by the agency of the state exercising administration over the wildlife resources of the state wherein the real property lies, or by the Secretary of the Interior; and (2) are chiefly valuable for use for any such purpose and which, in the determination of the GSA is available for such use, to convey such property to such agency without reimbursement or transfer of funds if the management thereof for the conservation of wildlife relates to other than migratory birds, or to the Secretary of the Interior if the property has particular value in carrying out the national migratory bird program. Personal property cannot be conveyed or transferred under this authority and only such improvements as the District Engineer determines to be necessary for proper execution of the applicant’s program may be conveyed.

b. Notice of Availability. If property is considered by the District Engineer to be valuable for wildlife conservation purposes, or if interest has been shown in acquiring the property for that purpose, notice of availability should be given to the agency administering state wildlife resources and to the Federal Fish and Wildlife Service if the property has particular value in carrying out the national migratory bird program. *

c. Classification - Factors to be Considered and Determinations to be Made by Disposal Agency. Should the property be classified as being chiefly valuable for purposes other than wildlife conservation purposes, such as agricultural, commercial, etc., the property may not be transferred to any state or to the Department of the Interior, under the authority cited in a above. However, should an application be received for conveyance of the property for wildlife conservation purposes, and the classification of the property indicates that it is chiefly valuable for other purposes, the classification, all pertinent papers and the application, together with the Division Engineer's recommendation, will be forwarded to HQDA (DAEN-REM) WASH DC 20314. In addition to the determination that the property is chiefly valuable for wildlife conservation purposes and is available for such use, the Division Engineer will determine, when recommending that property be conveyed for such use, that the applicant has the legal and financial ability to acquire, operate and maintain the property as proposed, and will furnish information to DAEN-REM to support his opinion. With proper safeguards, contaminated property can be made available for use in the wildlife conservation program.

d. Application. Any state desiring to make application for property for wildlife conservation will be furnished copies of Application For Real Property For the Conservation of Wildlife with accompanying instructions for preparation (Figure 11-9). In evaluating the application, the responsible District Engineer will request review of the application by the Regional Office of the Fish and Wildlife Service, Department of the Interior, and will obtain that Service’s recommendation as to the value of the property for wildlife conservation purposes.

e. Instrument of Conveyance. Any instrument of conveyance of property for wildlife conservation will contain the restrictions and conditions required by 16 U.S.C. 667b, c, d. A Sample for conveyance of Land and Improvements For Conservation of Wildlife, with the statutory restrictions and conditions is provided as Figure 11-10.

f. Publication of Order. The order required to be published in the Federal Register after disposal of the property under this authority will be processed for publication by the Chief of Engineers.

11-120. Shrines, Memorials, or Religious purposes. Pursuant to the provisions of FPMR, Section 101-47.308-5, when the Department, acting as a disposal agency, determines that a chapel may properly be used in place, a suitable area of land may be sold with the chapel for use as a shrine, memorial, or for religious purposes. The sale price of land for this purpose will be its fair market value based on its highest and *

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best use as established by an apprasial. Deeds conveying lands for such purposes will contain no restriction on the use of the land. Sale of the chapel building will be subject to the procedure and terms and conditions provided in Section XI of this Chapter.

11-121. Power Transmission Lines.

a. Authority. Pursuant to the provisions of Section 13(d) of the Surplus Property Act of 1944, as amended (50 U.S.C., App. 1622(d)), any state, or political subdivision thereof, or any state or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right of way acquired for its construction is needed for or adaptable to the requirements of a public or cooperative power project. Whenever any property is reported to GSA for screening, it will be assumed that GSA has screened Federal agencies for such purpose and no further screening with such agencies is necessary. Property not reported to GSA for screening will be screened in accordance with Section III of this Chapter. Screening with the appropriate state agencies will be conducted in all cases.

b. Procedure. Whenever a State, or political subdivision thereof, or state or Federal agency or instrumentality certifies that such property is needed for or adaptable to the requirements of a public or cooperative power project, the property may be be sold for such utilization at its appraised fair market value. In the event that a sale cannot be consummated and the certification is not withdrawn, such facts will be reported to DAEN-REM in order that a determination of the action to be taken maybe obtained from the Administrator, GSA. If no certification from a state or Federal instrumentality as outlined above is received after proper notice is given, the property may be disposed of in the same manner as other excess or surplus real property.

11-122. Assignment to Department of Health, Education, and Welfare (HEW) or Successor Agencies for Health or Educational Purposes.

a. Authority. Under Section 203(k) (1) of the Federal Property Act of 1949, as amended (40 U.S.C. 484(k) (l)) the Administrator, GSA is authorized, under such regulations as he may prescribe and in his discretion, to assign to the Secretary of HEW for disposal, such surplus real property as is recommended by the Secretary of HEW as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research. The Secretary of HEW is authorized under Section 203(k) (1), subject to disapproval by the Administrator, GSA after notice to him from the Department of Health, Education, and Welfare (HEW), to sell or lease surplus real property for such purposes. Pursuant to FPMR, Section 101-47.308-4, a military department, when acting as disposal agency is authorized to assign *

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property to HEW for disposal for education or health purposes and to disapprove, within 30 days after notice, any transfer of property proposed to be made by HEW for such purposes.

b. Notice to Department of Health, Education, and Welfare or Successor Agencies.
When real property is reported to GSA for screening prior to disposal by the military department, notification will be given HEW by the GSA Regional Office simultaneously with notification to the District Engineer that the property has been determined surplus to Federal requirements. The District Engineer will furnish such notification directly to the appropriate regional representative of the Department of HEW in the case of nonreportable real property immediately after he determines that the property is surplus to Federal requirements. Such notification will include the following information:

(1) A brief description of the property in sufficient detail to enable a determination of its probable suitability for uses authorized in Section 203(k) (1) of the Act.

(2) When the property may be inspected and where and how arrangements may be made for inspection of the property.

(3) That the property will be withheld from advertisement for bids for a period of 20 days from the time of the notification unless the office submitting the notification is sooner informed in writing as to whether the property is needed for school, classroom, or other educational use, or for use in the protection of public health, including research. If within that time notice is received of a known potential need, the property will be held for an additional 45 days or until a certification of need or request for assignment is received, whichever occurs first.

(4) The District Engineer shall not give such notification to HEW on surplus buildings and improvements located on surplus leaseholds where their removal from the site will increase the Government's restoration obligations under the lease. Where such a situation exists and GSA is to screen the property prior to disposal by the Department, GSA should be advised to this effect. Where any surplus buildings and improvements (on leaseholds or fee-owned land) are available for off-site disposal, notification will be given HEW (unless time restrictions prohibit as set out in Sections III and V) but the notification will include the same restoration obligations as would be placed in a sale of the property to a private party. *

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(5) During the 20-day period, action will be taken preparatory to advertising the property for sale. All inquiries received concerning acquisition of the property for such purposes from the state, or local agencies, or qualified organizations, seeking the purchase of available real property for health or educational purposes will be referred to the appropriate field representatives of HEW. If, within the 20 day period, HEW shall inform the District Engineer of any known potential requirement, the District Engineer will withhold disposition until a certification of need is received but not to exceed 45 days.

(6) Upon receipt from HEW of a certification that the property is needed for educational or public health purposes and a request from HEW for assignment of the property, if the property is available for such purposes, it will be assigned by the responsible District Engineer by letter addressed to the HEW office from which the request for assignment was received, citing the Act and GSA regulations as authority therefor. A copy of such letter of assigmnent will be furnished to the Regional Office of GSA.

(7) When notification of the proposed disposal is received from HEW, subsequent to assignment, if there is no reason for disapproval of the proposed disposition, notice from the responsible District Engineer to HEW of approval thereof is not necessary. Under Section 203(k) (1), approval is automatically given in the absence of notice of disapproval within 30 days from the date of notification of the proposed disposal. If in the request for assignment HEW furnishes the name of the proposed transferee and states that an application from the transferee is on file and that the proposed use by the transferee is one authorized under Section 203(k) (l), the District Engineer, in making the assignment to HEW, may state that no objection is interposed to the proposed transfer of the property.

(8) GSA has advised that it is not anticipated that the Corps of Engineers, in acting as the disposal agency, would investigate each request to it by the Department of HEW, because to make such investigations in each case would clearly duplicate the function assigned to the Department of HEW. Doubtful cases would only arise in connection with property for which the highest and best use is industrial or commercial, or where further study may be required by the Federal Government concerning future requirements for the property. In accordance with a further suggestion by GSA, where there is a reasonable doubt as to the propriety of an assignment to HEW or a proposed disposal by it, the request will be referred to GSA for final decision. Such referrals will be made through DAEN-REM.

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(9) The District Engineer making the assignment of the property will request HEW to furnish two copies of the sales contract. Upon receipt of these copies, together with a request from HEW that the property be transferred, custody will be given to the grantee or transferee named in the sales contract.

11-123. Surplus Disposal to Private Parties. General.
Paragraphs 11-125b through 11-130 cover general procedures for the sale of surplus fee-owned land and easement interests and includes actions to be taken preliminary to proceeding with the appropriate sale procedures set forth in Section XIV of this Chapter.

11-124. Cottage Site Disposal.
Disposal of lots for cottage site development and use is authorized by P.L. 84-999 (16 U.S.C. 460e). No new allocations of land for private cottage use will be made. The policy concerning phasing out of existing cottage site areas is set out in ER 1130-2-400. The DE has delegated authority to sell or lease cottage sites. Contract of Sale, ENG Form 3297-R, will be used.

11-125. Procedure.

a. Fee-owned land. When fee-owned land for which the department is acting as disposal agency has been found to be surplus to requirements of the Federal Government, has been classified under paragraph 11-116 and disposal is not made to a state, political subdivision, etc., the property will be offered for sale to the highest responsible bidder, except under special circumstances provided in Section XIV of this Chapter.

b. Easements. Easements that are readily assignable will be disposed of in the same manner as fee-owned land. Easements will usually redisposed of with land to which they are appurtenant. Easements may be disposed of to the owner of land which is subject to the easement (the servient estate). A determination should be made as to whether the disposal should be with or without reimbursement to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost to the Government. The amount of such reimbursement should be the appraised fair market value of the easement. In the case of disposal of an easement acquired for the deposit of spoil material a minimum charge of $225.00 will be imposed where relinquishment is being accomplished for the benefit of the owner of the servient estate and where no direct benefit will inure to the Government. A statement as to the commercial value will be made when recommending an easement for disposal. The circumstances and factors leading to these determinations shall be documented and retained in the files (FPMR, Section 101-47.313-1).

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11-126. Appraisal. Under the usual circumstances prompt action will be taken to appraise surplus property concurrently with its classification. Appraisals will not be undertaken for property which has been or is likely to be classified for disposal for any of the following purposes: airport; wildlife conservation; public highways, streets and alleys; disposal to the District of Columbia; and property assigned to HEW for disposal. Property that is to be disposed of for other than the above listed purposes will be appraised.

11-127. Disposal Plan for Fee-owned Land. A disposal plan will be made for each surplus property. It will include the District Engineer's recommendation of the method or methods of disposal and the reasons therefor; for example, whether improvements or minerals and lands should be sold separately; improvements cannibalized; whether the property should be subdivided; the media for advertising; and other pertinent factors. In addition, the following will be included as part of the disposal plan:

a. Description and map of the lands.

b. Description of buildings and other improvements.

c. Appraisal made in accordance with Chapter 4 of this pamphlet, unless exempted by paragraph 11-126.

d. Information as to when, from whom, and how the property was acquired.

e. Information as to the estate which the Government has in the land, and reservations and exceptions in and to the Government’s title. Outstanding interests granted by the Government or reserved or excepted in the acquisition of the lands will be stated with particularity. The map or plat will delineate any grant, exception, or reservation, such as telephone and telegraph, electric transmission, oil, gas and water lines.

f. Purchase price of land, buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

g. If there is an indication of valuable minerals, such statement will be made with full explanatory data.

h. Where the estimated value of the land together with improvements and related personal property is in excess of $1,000, the disposal plan will be submitted to DAEN-REM for approval. *

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11-128. Disposal Plan for Easements. When recommending disposal of a surplus easement the District Engineer will submit the following:

a. Information as to when and from whom the easement was acquired.

b. The consideration paid therefor.

c. Identification of the installation to which it is appurtenant.

d. If the easement has no commercial value, the amount that should be paid by the owner of the servient estate, representing a rebate on the purchase price, or the amount paid for severance damages will be specified. (For example, if the easement was acquired for a 15-year period and the price paid therefor was substantial and one year after acquisition it is returned to the owner of the servient estate, an effort should be made to obtain a rebate on the purchase price although the easement has no commercial value. The same would be applicable to the payment for severance damages).

e. If the owner of the servient estate or other prospective grantee, is not willing to pay the appraised value in consideration of the release of an easement acquired for a substantial consideration, all action to release the easement will be held in abeyance until such time as an adequate consideration can be obtained for the release. Note the minimum payment for release of spoil easements discussed in paragraph 11-125b.

11-129. Sale and Conveyance. Sales procedure, including advertising, will be in accordance with Section XIV of the Chapter. Normally conveyance will be by deed, prepared and executed as provided in paragraph 11-131.

11-130. Application of Antitrust Laws. Section 207 of the Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more, or patents, processes, techniques, or inventions, regardless of costs, shall not be disposed of until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Prior to obligating the Government on any such disposal, the District Engineer will furnish DAEN-REM information the probable terms or conditions. DAEN-REM will use this information as the basis for a request to the Attorney General for advice (FPMR, Section 101-47.301-2).

11-131. Preparation and Execution of Deeds. *

a. Authority to Execute. All conveyances of fee ownership and other permanent interests in land which the Army and Air Force have authority to convey under the statutory authorities and delegation set forth in this section of Chapter 11, will be executed by the Secretary of the Army, for Army land, and by direction of the Secretary of the Air Force, for Air Force land. Conveyances of surplus property that have
* been assigned to HHS for disposal will be executed by officers of that department.

b. Form of Deed or Instrument. Conveyances of fee-owned land and easements shall be by quitclaim deed prepared in conformance with local law and practice except where it is found that another form of conveyance is necessary or desirable to obtain a reasonable price for the property, or to render the title marketable, or for other reasons. Appropriate recommendations will be forwarded to CDR USACE (DAEN-REM) WASH DC 20314-1000. Forwarding correspondence should contain *
information as to the requirements of local law for witnesses, acknowledgment, authentication of acknowledgment, and other special requirements. The instrument of conveyance should contain a statement that the requirements of 10 U.S.C. 2662 have been met, or that the conveyance is not subject to these requirements.

c. Authority for Conveyance. Authority for conveyance will be recited in the granting clause. Conveyances under the Federal Property Act will recite: "*** under and pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the delegation of authority to the Secretary of Defense from the Administrator of General Services Administration (41 C.F.R. 101-47.601) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 F.R. 7113)." Conveyances to states and their instrumentalities under the special statutes, listed in paragraphs 11-115 through 11-122, will recite the special statutes, as continued in effect by the Federal Property Act and the delegations. Conveyances to states for wildlife conservation purposes under Public Law 537, 80th Congress (paragraph 11-119a) will cite the special act and recite that the property has been determined surplus under the Federal Property Act and delegations thereunder. Conveyances releasing the restrictions contained in a flowage easement prohibiting the construction and maintenance of structures for human habitation should cite as authority for the conveyance the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the Federal Property Management Regulations (101-47.313-11).

d. Conditions in the Conveyance. The deed will contain the reservations, restrictions, or conditions, required by: (1) the directive which authorized the disposal; (2) any special acts under which the property is conveyed; and (3) by any contract of sale, agreement to extend credit, or relocation contract, pursuant to which conveyance is made.

e. Acceptance by Grantee. Where the instrument of conveyance imposes obligations on the grantee, the instrument will be executed and accepted by or on behalf of the grantee prior to forwarding for execution. If the grantee is a corporation or body politic, the instrument will contain a certificate attesting to the authority of the officer executing the instrument to act for and bind the corporation or body politic, and that his signature is genuine. Where a resolution or other special action is necessary to legally bind the grantee, a copy will be attached to the instrument.

f. Execution of Deed.

* (1) The Division Commander will forward to DAEN-REM a draft of the deed, prepared in final form, together with copies of as many of the items listed below as are appropriate depending on the nature and purpose of the conveyance, any other information necessary for a complete understanding of the case, and the remarks and recommendations of the Division and District Commander. Upon approval of the proposed disposal by DAEN-REM, the deed will be forwarded to higher authority for execution and returned to the District Commander for delivery and distribution.

(2) Items to be forwarded with draft of deed proposed for execution, as appropriate:

(a) Real Property Classification, ENG Form 1825.

(b) Application or plan for use and procurement with recommendations and determinations of other interested Federal agencies when the conveyance is under one of the special acts listed in paragraphs 11-115 through 11-122.

(c) Disposal plans.

(d) Appraisal where not included in (c) above.

(e) Statement on advertising conducted.

(f) Abstract of bids.

(g) Relocation contract or exchange agreement. *

* g. Distribution of Deeds. The District Commander will deliver deeds, which will be recorded by or at the expense of the grantee. Copies of the deed will be conformed by writing the following on them: date and manner of delivery; date, time, and place of recordation in public land records. Place copies in the Division/District Real Estate Files. According to FPMR, Section 101-47.307-3, two conformed copies will be sent to any Federal agency charged with enforcement of reservations, restrictions or conditions of the deed. A confirmed copy will be sent to the holding agency. *

11-132. Reserved.

11-133. Reserved.

SECTION X. DISPOSAL OF LEASEHOLDS AND LEASEHOLD IMPROVEMENTS

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11-134. Authority. Surplus leasehold interests in real property are disposed of under authority delegated by the General Services Administration (GSA) to the Department of Defense (DOD). DOD has redelegated this authority to the military departments. DEs, within the limits of the authority delegated, have been authorized to terminate leases, execute agreements in settlement of restoration obligations, and perform necessary restoration work required by lease terms, directly or by contract, in accordance with the provisions of this section. Exceptions are where: (a) under the terms of the lease the leasehold is transferable to third parties or Government-owned improvements on leased airport or other special types of leased property have an in-place value to the lessor for airport or other special purposes; or (b) the leasehold or Government-owned improvements may be disposed of to eligible public agencies under special statutes (FPMR 101-47.4905), in which cases the procedures provided in Section IX will be applied to the extent applicable. Disposals within the scope of the above exceptions require the prior approval of DAEN-REM.

11-135. Procedure for Termination of Leases. When leased premises are no longer required for use by the Government, a notice of termination will be given to the lessor in accordance with the terms of the lease, effective as of the date of vacation. The termination notice will be served sufficiently in advance to allow time for compliance by the Government with terms of leases providing for removal of improvements and restoration of premises. Where a lease does not contain provision for continuing renewal without notice and will automatically expire, the Government is not required to give notice when it intends to surrender the premises at the expiration of the lease. However, the lessor should be informed, as far in advance as possible, of the Department's intention to vacate,in order that he may plan for a new tenant for other use of the premises. Where a lease provides for a continuing renewal without notice, the DE will ascertain in advance of the beginning of each fiscal year whether the using service has need during the fiscal year for the premises. When the premises are no longer required, a notice of termination will be served in accordance with the terms of the lease. In the event the lease does not provide for termination by the Government, but the lessor will consent to termination, either in its entirety or partially, a supplemental agreement should be entered into to terminate or amend the lease as of the date the premises will be vacated, Government improvements removed, and restoration completed.

a. Forms of Notice of Termination. Where leases provide for restoration, Notice of Cancellation (Restoration) will be prepared in sextuplet in accordance with Figure 11-11. Figure 11-12, Notice of *

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Cancellation, will be used for leases which do not provide for restoration or for leases where written notice requiring restoration has been submitted by the lessor prior to termination. Notice of termination will be prepared on the letterhead of the DE concerned, who will assign his own form-letter number.

b. Manner of Serving, Notice of Cancellation. The Notice of Termination must conform to requirements of state law, and will, whenever possible, be served personally upon the lessor. In some states, to be legally effective personal service is mandatory, unless expressly waived. The lessor will be requested to execute the acknowledgment of receipt of notice on the form. Where the service is effected by registered or certified mail, a return receipt will be requested and a sufficient number of days (in addition to the stipulated period of notice) will be allowed for transmission and receipt of notice. The return receipt properly signed will be evidence that full notice required by the lease has been given. Should the owner refuse or fail to acknowledge receipt of the notice, the officer serving the notice will so certify thereon, giving the date and method of service. In the case of an absentee lessor, where time will not permit use of certified or registered mail for effecting service, notice will be given by telegram to be delivered, not telephoned, to the addressee. In the case of notice by personal service, any available Army facility or personnel in the lessor's locality may be used.

c. Distribution of Notice of Termination. The original notice of termination will be delivered to the lessor; one copy to the finance and accounting officer who pays the rental; one copy to the using service; and one copy to the DE office files.

11-136. Vacation and Protection of Premises. The DE will take action to insure that the premises are vacated by the using service on or before the date specified in the termination notice (or the date of expiration of the lease where formal notice is not required), and will assure provision is made by either the using service or the DE, as appropriate, for proper protection of the property pending the transfer of custody to the lessor pursuant to Section VI of this Chapter and AR 405-90.

11-137. Joint Survey of Premises.

a. When Required. As soon as practical after restoration is requested by the lessor, a terminal condition report to reflect the condition of the leased property as of the termination of the lease, and a terminal survey to determine the extent of restoration required, if any, will be prepared. The lessor will be invited to have his estimators accompany the survey party. The lessor's estimates of restoration *

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costs should be obtained promptly, and included in the terminal survey for purposes of comparison in accordance with paragraph 11-144c. Survey and condition reports will not be limited to items for which the lessor specifically requests restoration, but will include all items which the DE determines should be restored in order to fulfill the Government's obligation under the lease.

b. Contents. The report will show, in detail, the work items necessary to place the premises in as good a condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

c. Housing Leases. The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

11-138. Limits on Government Obligation to Restore. The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

a. Restoration Not to Exceed Fee Simple Value. The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

b. Where Estimated Cost of Restoration Exceeds Diminution in Value. When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of *

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the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that, "This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished" (28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

11-139. Requirement for Notice by Lessor. Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held in the case of Smith vs. United States, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B-48678, 10 April 1945, the Comptroller General expressed the following views along this 1ine:

a. In leases containing to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be reqarded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States. *

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b. In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to suport a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

c. Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

d. As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restortion, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

11-140. Items Excluded from Usual Restoration Obligation. Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

a. Foundation work.

b. Waterproofing or membraning.

c. Exterior tuck pointing.

d. Cleaning or repair of catch basins, cesspools, or manholes.

e. Repair of:

(1) Interior unfinished walls. *

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(2) Unfinished hollow tile, concrete block, or gypsum block walls.

(3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).

(4) Insulating materials in walls necessitated by leakage in walls or roofs.

(5) Damage to plaster caused by leakage in wall or roof.

(6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighing, caulking or sealing.

(7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.

(8) Structural steel or iron.

(9) Fire escapes.

(10) Heating systems.

(11) Plumbing systems.

(12) Ventilating systems and air conditioning systems.

(13) Power Plants.

(14) Electric wiring.

(15) Lighting fixtures (or replacement).

(16) Sprinkler systems.

f. Settling or subsidence.

g. Other structural repairs to buildings or equipment.

11-141. Nature of Required Restoration. Restoration by the Government will ordinarily include the following:

a. Wear and tear beyond that which is reasonable and ordinary.

b. Damage due to negligence by Government personnel.

c. Restoration or reinstallations necessitated by alterations or removals by the Government. *

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d. Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decontamination of chemically contaminated lands or improvements. (See Section XIII of this Chapter).

11.142. Minor Restoration Cases - Determining Extent of Restoration Required.

a. In minor restoration cases, ENG Form 1440A-R, Joint Terminal Condition Survey (Figure 11-13) will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 14401B-R, Cost of Restoration. (Figure 11-14). In order to effect economies, the DE may arrange for the utilization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

(1) The initial cost of Government improvements or alterations did not exceed $5,000; and

(2) The net salvage value of Government improvements remaining does not exceed $1,000; and

(3) The cash payment to the lessor in lieu of restoration does not exceed $1,000; and

(4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

b. Preparation of ENG Form 1440-R. Use of ENG Form 1440B-R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

(1) The procedure hereunder envisions the use of both ENG Form 1440A-R and ENG Form 1440B-R, which complement each other.

(2) The use of ENG Form 1440B-R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.

(3) Distribution of these forms, together with any supporting exhibits, will be accomplished in the same manner as set forth in 11-150b below, *

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11-143. Major Restoration Cases - Determining Extent of Restoration Required.

a. Engineer Estimate and Appraisal. Any restoration case not covered by the definitions of minor restoration case in paragraph 11-142a above is a major restoration case. A complete engineer estimate and appraisal will be prepared by the DE for use in negotiating a cash settlement, or to determine the cost of restoration, if the work is to be performed by the Government. ENG Form 1440-R, Cost of Restoration, (Figure 11-15) will be used for this purpose. A copy of this form will be transmitted to the General Accounting Office in support of settlements made with landowners in the case of military property and contains the minimum data required by that office. Such transmittal is not required when civil works property is involved. In order to afford a measure of flexibility, ENG Form 1440-R is divided into five parts, each relating to specific factors, to be used as conditions may require.

b. Preparation of ENG Form 1440-R. Comments and instructions for preparation of ENG Form 1440-R are contained in the following paragraphs which are keyed to the item numbers on the Recapitulation sheet, Part I of the form:

(1) “1” to “6” Self-explanatory.

(2) “7.Original Cost (Actual or Estimated) of Government-owned improvements, fixtures and alterations: (Part 4).” The General Accounting Office requires that, in all cases involving the relinquishment of Government-owned improvements to lessors in lieu of restoration, and in any other cases where a contract is entered into between the Government and another party to transfer improvements, the original cost of the improvements be given. If not ascertainable, an estimate should be submitted. In exceptional cases, where, because of the circumstances or expense of the work involved, neither the original cost nor a reasonably accurate estimate can be given, an explanation of the facts and circumstances is required. Where structures have been built under contract, or improvements made under contract, a citation to the contract under which the work was performed should be submitted with the original cost statement, estimate, or explanation.

(3) “8. Estimated Market Value, (Value in place of Government-owned improvements, fixtures, and alterations) : (Part 4).” An estimate will be made of the current market value of the buildings or improvements in place. In those cases where it is indicated that the Government-owned buildings or improvements located on leased lands may materially enhance the value of the leased site, an appraiser will estimate the market value of the fee title to the leased area in its unrestored condition. He will also separately estimate the market *

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value of the site, assuming restoration as provided in the existing lease. The difference between the fee title value and restored land value will be reported as the "value in place" of the improvements to be sold or otherwise disposed of. "Value in place" is defined as the amount by which the improvements involved enhance the market value of the leased site. This value will serve to establish the top sales price expectancy in negotiations with the landowner.

(4) "9. Gross Salvage Value of Government-owned property: (Part 4)". The "gross salvage value" is the highest price obtainable in the open market for Government-owned improvements when sold for use elsewhere than on the leased premises, assuming that no expense to the buyer is involved in the dismantling and/or removal of the improvements from the leased property to the nearest probable market or location of future use. The estimate of gross salvage value should be made in accordance with established property appraisal procedures. Because market demand usually determines the highest and best use to which the components of a group of improvements will be put (e.g., whether a building will be worth more on the market for riming intact to a new site for continued use as a building, or worth more as a stockpile of used construction material), it is important to consider not only prevailing market prices and demand for used construction materials in the vicinity by contacting sources such as local building trades, wrecking companies, used material dealers, etc., but to also give consideration to possible interest by house moving and construction companies and individuals who might utilize improvements intact. Due consideration should also be given in making the estimate to the effect that such facts as the original cost of the improvements, the original cost of the materials therein, and the deterioration or depreciation of the materials in place might have upon the market value.

(5) "10. Estimated Cost of Dismantling and/or Removal of Government-owned Property: (Part 4)." The estimated dismantling cost and/or cost of removal will be itemized in the appropriate column opposite the itemized listing of improvements on the ENG Form 1440-R (Part 4), and the total will be reflected on the recapitulation sheet (Part 1). The dismantling cost is the amount of expenditure necessary to accomplish dismantlement in a manner providing the greatest net return to the Government. Net return is the value of the improvements when detached or dismantled, less the cost of dismantling or detaching, and less the cost of removal. The cost of removal is the cost of moving the detached or dismantled improvements to the nearest probable market or the nearest installation of the Department having adequate storage space. In cases of frame buildings having concrete or similar permanent-type floors or foundations, the cost of removal of such floors or foundations will not be included as an item of dismantling and/or removal cost. Instead, it will be treated as an item in the *

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estimatd "Cost of Restoration other than Cost of Dismantling and Removal" (Item 12). In developing estimates of gross salvage value and costs of dismantling and/or removal, inquiry should be made of experienced tradesmen, used material dealers, wrecking contractors, etc., familiar with the local market for the types of materials and services involving the current costs of loading, hauling, unloading, cleaning, stockpiling and other economic factors contributing to the current local market value of similar materials in useable form.

(6) "11. Estimated Net Salvage Value of Government-owned Property: (Part 4)". This amount is obtained by subtracting the estimated cost of dismantling and/or removal (Item 10) from the estimated gross salvage value (Item 9).

(7) "12. Cost of Restoration other than Cost of Dismantling and Removal: (Part 3)". From information developed by the joint survey of the property, paragraph 11-137 above, it is the responsibility of the real estate officer, or his representative, to advise the personnel responsible for preparing the restoration cost estimate of the items which will require restoration, repair or replacement under the terms of the lease. A brief statement as to the probable cause of damage, in excess of ordinary wear and tear, or resulting from other than circumstances over which the Government has no control, will be included in the supporting data.

(8) "13. Total Cost of Restoration: (Item 10 plus Item 12)". The estimates of cost under Items 10 and 12 will be based on sound estimating practices generally employed for the type of work involved. The estimates will be predicated on performance of the work by contract and, therefore, consideration will be given to justifiable allowances for contractor's profits, insurance, employees compensation payments, and overhead.

(9) "14. Net Cost of Restoration: (Item 9 minus Item 13)". In those cases where the cost of dismantling and/or removal of Government-owned improvements (as defined in Item 10), and the other costs of restoration (as defined in Item 12), exceed the gross salvage value (as defined in Item 9), the difference is a minus quantity and constitutes the maximum amount of money which the Government can pay the lessor, in addition to transferring all improvements to him in lieu of restoration and paying rent during the estimated period of restoration (provided such improvements are not considered to have an "in place" value). If this is a plus quantity, it represents the minimum amount of cash that the Government can accept from the lessor after transferring to him all items of property or equipment shown in the report, less the allowance for rental during the estimated period of restoration. *

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(10) “15. Approximate Time Required for Actual Salvaging and Restoration Operations”. So long as the owner is deprived of use of his property he is entitled to rental stipulated in the lease. A fair allowance will be made in a settlement with the lessor to cover a reasonable time required to fit the premises for use. If all improvements are to be left in place, it may well be that no allowance for rental will be required by the lessor for time required for salvaging.

11-144. Negotiating Restoration Settlements. Negotiated settlements in lieu of performance of actual restoration work by the Government are ordinarily favored because they most satisfactorily achieve the objectives of fulfilling the Government’s obligations under the lease in the most efficient and economical manner, recouping the greatest amount of the Government's investment in improvements to leased property and maintaining good public relations in the acquisition and disposal of leaseholds. However, because of variable circumstances, this principle cannot be stated as an inflexible rule applicable to every case. It is the responsibility of the DE to carefully consider all possible approaches within the scope of this chapter and select the best course of procedure in each case.

a. Financial Limitations Which preclude Actual Restoration. In view of the limitations of the Government’s restoration obligations to amounts not in excess of the fee value of the leased property, or the difference in values of the leased property with and without restoration, actual performance of restoration work is precluded where these amounts would be exceeded, and a settlement in lieu of restoration is in order in amounts not to exceed the limitations indicated.

b. Settlement Where Property Enhanced in Value by Improvements. Where the leased property has been enhanced in value by the Government’s improvements, no restoration should be performed nor payment by the Government made in lieu thereof. Instead, effort should first be made to obtain from the lessor a cash payment to the Government equal to the in place value of the improvements, together with a full release of the Government from any restoration obligations. If the lessor is not willing to pay the in place value, but will offer a lesser amount in excess of the estimated net salvage value, settlement may be reached on that basis. If the lessor will not agree to make payment of any amount, or will offer only an amount which is less than the net salvage value of the improvements, consideration should be given to selling the improvements for removal and accomplishing any remaining restoration by payment in lieu thereof or by actual performance of the work. If it becomes necessary or advisable to arrange for separate sale of any or all of the improvements, the sale should be accomplished in accordance with Section XIV. The terms of sale in such case will require the removal of the improvements on or before the expiration or termination of the lease *

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and contains any other special requirements applicable to the particular case, including site restoration. Bids received should be compared with the highest price offered by the lessor, due consideration being given to the cost of restoration, if any, which would remain after removal of the improvements. It must always be borne in mind that the disposition of pubic property to private parties must be at prices which can be shown to be in the best interests of the Government.

c. Reaching Agreement on Estimates of Cost. The terminal survey and condition reports specify the Items to be restored and the lessor’s estimate of cost. Those items reflected on the ENG Form 1440-R (Part 3) afford comparison between the lessor’s and the Government’s estimates. Where there is a variance in the estimates and the lessor’s total estimate is lower, effort will be made to settle on the basis of his estimate. If the lessor's overall estimate is higher than the Government’s, effort will be made to reach agreement on acceptance of the Government’s total estimate. If the lessor’s estimate is substantially higher on specific items, it may be desirable to disclose the basis on which the Government’s estimate is predicated in order to demonstrate its reasonableness. The Government’s estimate of cost for items of restoration maybe made available to the lessor upon request. When the lessor requests items of work not shown on the Government’s estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN-REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

11-145. Claims for Loss or Damage of Personal Property. In some cases, owners have been allowed to store personal property, owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from *

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all liability except for claims for damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease, and the lessor advised that he may submit a claim for the amounts which he considers due him.

11-146. Rent During the Period Required for Restoration. A sufficient period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

11-147. Settlement Where Part of the Premises is Surrendered. Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

11-148. Documenting Lease Terminations and Restoration Settlements. In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Government improvements removed. Releases will also be obtained as indicated in paragraph 11-152 below.

a. Form to be Used. Releases will be executed, in triplicate, on ENG Form 232-R, Release (Corporation), or ENG Form 231, Release (Partnership), according to whether the lessor is a corporation, or partnership. If signed by an attorney or agent, evidence of authority should be attached to the release. If the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11-16. Distribution of releases will be accomplished in the same manner as set forth in paragraph 11-150. ENG Form 232-R is shown as Figure 11-17.

b. Qualified Release. In case the lessor declines to sign an unqualified release, he should be requested to execute an approriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form. *

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11-149. Preparation of Supplemental Agreements Effecting Settlement. The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement: to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without fomal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B-63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items: instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

11-150. Supplemental Agreement Assembly.

a. Composition. Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

(1) Completed Notice of Termination (Figure 11-11 or 11-12).

(2) ENG Form 340 (Supplemental Agreement Accepting Proposed Restoration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor’s notice requiring restoration, unless the lessor has signified that restoration is not required (Figure 11-11).

(4) Joint terminal survey and condition report.

(5) ENG Form 1440-R, or 1440A-R and 1440B-R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

b. Distribution. An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the *

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major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

11-151. Payment for Restoration or Settlement in Lieu of Restoration. Voucher forms, appropriate to the circumstances, w1ll be usd in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of Section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

11-152. Performance of Restoration Work by District Engineer - Extension of Time. Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or by contract, within the limitations outlined in this Chapter. Any contract entered into for such work should provide for required restoration work to be performed on or before the determined effective date of termination of the lease. A complete record of the items of work performed and the costs thereof will be kept. If the lessor, prior to commencement of the work, is not agreeable to executing ENG Form 340, DA Supplemental Agreement Accepting proposed Restoration, efforts will be made, upon completion of the work, to obtain a release on ENG Forms 232-R, or 231, or on ENG Form 341 in the event of a cash settlement for that part of the restoration not performed. Where the Government is obligated to perform restoration and remove improvements, and it cannot be accomplished by the Government prior to the effective date of termination, a supplemental agreement will be prepared, antedating the effective date of termination, for such periods as may be required to effect restoration and to remove improvements, if the lessor is unwilling to terminate the lease and rental thereunder, with the reservation that the Government will have a right upon the premises for the purpose of performing restoration, conducting sales of improvements thereon, or doing similar acts related to restoration.

11-153. Termination and Settlement of Leasehold Condemnation Proceedings. *

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a. Leasehold Condemnation Termination Assembly. When leasehold estates in land, or other similar limited estates or terms for years, acquired or in the process of acquisition, have been determined surplus in acoordance with this chapter, a prompt report will be made to DAEN-REM containing the following items of information as appropriate and necessary to a full understanding of the proposed disposition action.

(1) Name of project and using using service.

(2) Style and civil number of the condemnation proceedings in which the land is involved.

(3) Particular tract or tracts involved.

(4) A citation of the authority pursuant to which the surplus status has been determined.

(5) Three copies of ENG Form 1440-R, or 1440A-R and 1440B-R.

(6) The proposed date of vacation of premises by Government.

(7) The term condemned and rights of the Government as to extension and cancellation thereof.

(8) Whether a declaration of taking, or supplement thereto, has been filed and the amount of deposit, if any.

(9) Whether an award or order for payment has been made, and the amount of the owner's withdrawal, if any.

(10) The estimated rental cost through the end of the term acquired in the condemnation proceeding.

(11) The estimated fair rental value of the land for the period of occupancy by the Government, including time for restoration.

(12) Recommendation as to the advisability of abandoning the proceeding.

(13) Request for termination of condemnation proceeding.

b. Action by Chief of Engineers. DAEN-REM will review the termination assembly and settlement proposal recomnended and, if approved, recomnend to the Department of Justice a basis for settlement at the same time requesting the Department of Justice to move for termination or conclusion of the proceedings. *

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11-154. Negotiating Stipulation Where Proposed Settlement Not Acceptable. Should the court overrule the motion for abandonment, or should it appear that claims for damages will be interposed by the property owner, the responsible DE and the Department of Justice representative will negotiate with the owner for the purpose of obtaining his consent to the abandonment of the condemnation action. The Government will agree to pay the owner a sum representing the rental value of the premises for the period of occupancy by the Government, plus the cost of restoration as determined under paragraphs 11-142 and 11-143. Such estimate will include the value of personal property, buildings, crops, and other property damaged, destroyed or lost by the Government. DAEN-REM upon recommendation of the DE will request the amendment of the proceeding to include the taking of any property for which compensation is to be paid. The same criteria for settlement with lessors as under a negotiated lease will govern. In the event the landowner will not agree to settle, his best offer will be submitted to DAEN-REM, with the DE's recommendation, for consideration. If a tentative settlement is reached, the term will be included in a stipulation to be filed in the condemnation proceedings, after approval by DAEN-REM and the Department of Justice, which stipulation will specifically provide:

a. That the property owner releases and relinquishes all claims of any nature whatsoever which have arisen, or may arise, out of the Government's occupancy of the property; and

b. that the owner consents to the abandonment and dismissal of the condemnation proceedings. Where the settlement amount is to be paid directly to the owner by the DE in lieu of deposit in the proceedings, the stipulation will so provide.

11-155. Physical Restoration Where Stipulation Not Obtained. If such stipulation is not obtainable, then, whether or not a declaration of taking has been filed, the owner will be requested to designate, in writing, the restoration for which he believes the Government is liable. The Government will restore the property to the condition existing at the time of first entry by the Government, except for reasonable and ordinary wear and tear, damage due to acts of God, or circumstances over which the Government has no control. The cost of restoration or settlement in lieu thereof will be limited as outlined in this chapter.

11-156. Release and Record of physical Restoration. The responsible DE, upon completion of restoration, will make every effort to obtain a release of further claims for damaqes. A complete record of all items of restoration and the cost will be kept for use at the final hearing in condemnation or in any collateral proceedings, in the event a release is not obtained. Where litigation is anticipated, photographic evidence of work performed will be obtained. *

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11-157. Condition Reports. Survey and inspection reports covering the real estate, and inventory and condition reports covering the personal property located therein, made prior to first entry by the Government under condemnation proceeding, will be compared with the condition shown by similar reports made when the using service vacates the property.

11-158. Settlement of Claims. Claims for damages or restoration filed in condemnation cases, when practicable, will be settled in the condemnation proceeding to avoid separate suit by the owner to recover compensation to which he may be entitled. In such cases request will be made of DAEN-REA-C to have the proceeding amended to enlarge the issues to include restoration.

11-159. RESERVED.

11-160. RESERVED.

11-161. RESERVED. *

SECTION XI

DISPOSAL OF BUILDINGS AND OTHER IMPROVEMENTS (WITHOUT THE RELATED LAND)

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11-162. Authority. Under authority vested in the GSA by the Federal Property Act, and the delegation of such authority made by GSA in FPMR, Section 101-47.302-2, the Department of the Army is designated as the disposal agency for the following property:

a. Leases, permits, licenses, easements, and similar real estate interests held by the Government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

b. Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

11-163. Methods of Disposal. Excess buildings and other improvements may be disposed of by the follwing methods:

a. By demolition for utilization of salvage materials in the overall Army or Air Force construction or maintenance program. Screening with other military departments is not necessary for this purpose.

b. By transfer to another Federal agency.

c. By assignment to the Department of HEW for disposal for health or educational purposes pursuant to Section 203k(l) of the Federal Property Act (FPMR 101-47.308-4).

d. By sale intact for removal from site to the most appropriate of the following, according to the circumstances:

(1) Eligible public agencies (Sections IX and XIV).

(2) Boy Scouts of America (Section XIV).

(3) Military chapel buildings and chapel equipment to nonprofit organizations for use, first as a shrine or memorial and, second as a denominational house of worship.

(4) Owner of the underlying land as a part of restoration settlement where disposal of a leasehold is involved. *

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(5) An emergency Plant Facilities contractor.

(6) The general public, through competitive bidding, unless special circumstances warrant a negotiated sale for a specific purpose.

e. By donation, abandonment or destruction.

11-164. Determining Method of Disposal. DEs are designees of the Chief of Engineers under AR 405-90 to determine the method of disposal authorized by law or regulations which is most advantageous to the Government. Where alternatives are presented, there will be an affirmative finding that the method of disposal approved is most advantageous. In the exercise of this authority, due consideration will be given to the effect of particular methods of disposal on safety and sanitation in the area, the proposed or probable future utilization of Government-owned sites by the Government, or in the case of leased lands, the restoration obligations of the Government under the lease. In order to assure consideration of these factors, disposals by transfer to other Government agencies or by sale intact will be brought to the attention of the installation commander or his representative prior to initiation of disposal action. Reasonable requirements for site clearance consistent with the foregoing criteria should be favorably considered and disposal conditioned accordingly, notwithstanding the fact that such action may result in a greater burden to transferee agencies or, in the case of disposal by sale intact, may result in a reduction in the monetary return which might be reasonably expected in a sale involving less stringent site clearance requirements. DAEN-REM will be informal of any instances of excessive or unreasonable requirements with respect to site clearance. The DE will determine by inspection and survey the method to be used in disposal of buildings and improvements.

11-165. Excessing Army Military and Air Force Property. The procedures for placing buildings and improvements in excess status are set forth in AR 405-90 and AFR 87-4. In instances of land acquisition where buildings and improvements were acquired incident thereto, DEs are designated by the Chief of Engineers under AR 405-90 to make disposition of this property. Coordination with the installation comnander concerned is required. When, under AFR 87-4, the responsible DE is called upon by the Air Force Command to furnish an estimate of the value of buildings and improvements for the purpose of determining the approval authority for excessing the property, no formal appraisal will be made. If, in his opinion, the total property exceeds a value of $100,000, he will furnish only a rough estimate of its value in round figures. If the property is, in his opinion, of a value of $100,000 or less, he will limit his statement to this fact and will not specify an estimated valuation. *

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11-166. Excessing Civil Works Property. The DE are authorized to approve the disposal of buildings and improvements acquired incidental to the acquisition of land in reservoir areas, regardless of the original cost thereof, when they are in the way of authorized construction or when the land upon which they are located is to be permanently or frequently inundated. DEs may authorize the disposal of buildings and other improvements in any one or more of the following categories, which are located on lands which are not excess and which are not expected to become excess, and the sale is to be made after advertising:

a. Buildings or improvements on land acquired by the Government determined to be available for disposal pursuant to ER 735-2-1 (Property Accounting Procedures - Civil).

b. Buildings or improvements which cannot be kept in repair at a reasonable cost.

c. Buildings or improvements which are dangerous to life or likely to damage adjoining structures or have become hazardous or nuisances.

d. Buildings or improvements which are damaged or unsuitable for public service.

e. Buildings or improvments constructed by the Federal Government which occupy or interfere with sites for new construction or for other civil works purposes.

f. Temporary buildings or improvements which have served the purpose for which they were constructed.

11-167. Civil Works property - Reimbursement of Appropriation. Under Title 33, United States Code, Section 558, the proceeds from a sale or transfer of buildings or improvements may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, on non-exess land come within the purview of this law. For further instructions on disposition of proceeds, see paragraph 11-12 Supra.

11-168. Demolition of Buildings and Other Improvements for Utilization of Salvage Material. With respect to DA property, demolition may be undertaken by the DE of buildings on non-excess land made available for disposal, when the salvage is to be used in construction or maintenance work by the Corps of Engineers or upon specific request from another service, where funds for the purpose are made available. Real Estate funds will not be used for such demolition. Determination of practicability for use of buildings or improvements in authorized new construction at other sites or for salvage of materials will be made by the DE in accordance with existing instructions relating to use of materials *

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in new construction. Where restoration of leased premises is being performed, it is the responsibility of the Corps of Engineers to perform the necessary demolition work as part of the restoration obligation, as set forth in Section X. Demolition may be accomplished under contract when special or expert services are required for removal of certain types of structures and funds are available therefor. Unused salvage materials will be turned over to redistribution and salvage officers for redistribution or disposal in accordance with existing regulations pertaining to personal property. The relocation of buildings or improverments on the same installation or for re-erection at another installation is not to be accomplished as a real estate function (AR 420-70). Further, it is provided in AR 420-70 that demolition of buildings or improvements where retention of the salvage for use at the installation is approved, or where no requirement or market is found for buildings or improvements approved for disposal by the Corps of Engineers, is a facilities engineering responsibility. Pursuant to AFR 87-4, disposal of AF buildings and improvemnts by sale will be accomplish by the Corps of Engineers, but all disposal of such property by salvage will be accomplished by the base comnander.

11-169. Authority for Transfer of Buildings and Improvements to Other Federal Agencies. Buildings and other improvements which have been screened for defense requirements as outlined in Section III, Supra, may be transferred to another Federal agency as hereinafter outlined. The authority for the transfer of such property to other Federal agencies is outlined in Section IX, Supra. The responsible DE is authorized to transfer buildings or structures for removal from the site, which have been made available for disposal by proper authority, upon receipt of a request signed by an official of another Federal agency.

11-170. Procedure for Transfer. Transfer of buildings to other Federal agencies will be accomplished by Form 1354. An estimate of value will be shown on DD Form 1354, Transfer and Acceptance of Military Real Property or other forms used and, in the case of transfer without reimbursement, the following footnote will be made: "Transfer to (Department or Agency), adjustment of funds not required." When the transfer is made at the direction of GSA, an explanation therefor will also be made on the form. Buildings and other improvements which are reported to GSA for screening against requirements of other Federal agencies (Section V) will be transferred to another Federal agency only at the direction of GSA and for the amount of reimbursement, if any, determined by GSA. Buildings and improvements which are not required to be reported to GSA will be screened against requirements of other Federal agencies by the responsible DE as provided in Section III. Upon request by a Federal agency for transfer of such property, the responsible DE will determine the amount of reimbursement, if any, in accordance with the criteria outlined in Section IX. *

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11-171. Responsibility of Transferee. Where buildings or other improvements are on lands leased to the United States, the agency requesting the buildings will be expectd to remove the building and restore the premises, as required by the terms of the lease, or to accept an assignment of the lease together with all obligations thereunder. Where the buildings or other improvements are to be removed from non-excess land, the transferee agency will be expected to perform reasonable site clearance as may be required by the commanding officer.

11-172. Assignment to Department of HEW or Successor Agencies. Pursuant to delegation of authority contained in FRMR, Section 101-47.308-4, as set forth in Section IX, Supra, the responsible DE may assign buildings or other improvements made available for disposal and not required for Federal purposes to HEW upon receipt of request therefore from the appropriate regional representative of that department for disposal for public health or educational Purposes. Assignments will be effected by letter addressed as indicated in paragraph 11-173 infra. Further, pursuant to delegation of authority the Department may disapprove within 30 days after notice from HEW, any transfer of property proposed to be made by that agency for such purpose. The DE will be guided by the policy set forth in Section IX, in regard to the delegation to disapprove transfers by HEW.

11-173. Notification of Department of HEW or Successor Agencies. When buildings or other structures are reported to GSA for screening pursuant to Section V, supra, the Reports of Excess are available to HEW by the Regional Office of GSA, and no notice of the proposed disposal need be given by the DEs. Where buildings and other structures are not reported to GSA simultaneously with circularization of other Federal agencies, HEW will be notified in writing of the availability of such structures. Such notification will be addressed to the appropriate field representative of HEW, and will include the following information:

a. A brief description of the buildings and improvements, including dimensions of buildings, types of construction, and demountable characteristics, if any.

b. The extent of building site clearance expected.

c. That the improvements must be removed and site clearance completed within a specified definite period from the date of assignment to HEW (usually 60 to 90 days, depending upon the size of the removal operation).

d. When improvements may be inspected. *

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e. That the improvemnts will be withheld from advertisement for bids for a period of 20 days from the date of the notification, unless the office submitting the notification is sooner informed in writing that such property is not needed for school, classroom, or other educational use or for use in the protection of public health, including research. If within the 20-day period, notice is received of a potential need, the property may be held an additional 45 days until a certification of need or request for assignment is received.

11-174. Procedure for Disposal through the Department of HEW or Successor Agencies. During the period held, action preparatory to the publication of Invitations for Bids and Specifications of Sale of Buildings and Improvements will be taken in order to minimize the time lapse between the expiration of the 20-day period and the beginning of the sale procedure. Inquiries received prior to the expiration of the holding period from state or local agencies or qualified organizations seeking the purchase of available improvements for health or educational purposes, will be referral to the appropriate field representatives of HEW.

a. Final disposal is not effected until the improvements have been transferred by HEW to an elegible recipient. Therefore, in the letter of assignment, HEW will be requested to furnish to the responsible DE, three copies of the sales contract. One copy of the contract will be forwarded to the officer accountable for the property, together with a certificate of performance upon completion of the operation (the latter to be furnished by the HEW contracting officer), and one copy will be furnished to the property auditor charged with periodic audit of the property records.

b. Should HEW fail to consummate disposition of the improvements after assigment to it and request cancellation of the assignment, the assignment may be cancelled by a letter of cancellation and appropriate disposition of the improvements affected. If there is an excessive number of such requests, DAEN-REM will be informed in order that corrective action may be requested of HEW.

11-175. Sale of Buildings and Other Improvements. Buildings and other improvements made available for disposal by competent authority and not needed for further Federal utilization, or assigned to HEW, will be disposed of by sale by the responsible DE. Sales will be accomplished in the following manner:

a. Sale to Lessor Where Restoration is not Required. Where the terms of a lease do not require restoration by the Government, it may nevertheless be in the best interest of the Government to negotiate a sale of the improvements to the lessor. In such cases, the DE is authorized to negotiate such sale where the net salvage value of all *

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improvements located on the premises involved in any one lease is less than $1,000, and the sales price is determined to be as high as can be expected under the circumstances and compares favorably with the Government estimate prepared in accordance with d. below.

b. Sale Under Options. All leases or other rights of occupancy will be examined to detemine whether the owner of the land has an option to purchase buildings or other improvermmts. See paragraph 11-176 for sale of improvements constructed under Emergency Plant Facilities or similar contracts.

c. Sale to Eligible Public Agencies, the Boy Scouts, and the public. The sales procedure, including notice to eligible public agencies and advertising, set forth in Section XIV will be followed in the sale of buildings or other improvements.

d. Appraisal. Except as otherwise provided in Section XIV, infra, buildings and other improvements will be appraised prior to sale. Except as provided in paragraph 11-180, appraisal will be based on the highest and best use which may be for (1) removal and use intact; or (2) for dismantling, and removal and stockpiling the salvageable material for reuse or sale.

11-176. Disposal of Buildings and Improvements Constructed Under Emergency Plant Facilities (EPF) or Similar Contracts. Procedure for the disposal of property constructed under a facilities contract on lands neither owned by nor leased to the Department is set forth as follows:

a. By Using Service. Disposal of structural components as well as equipment may be accomplished by the using service. The term "structure" is defined to mean plant equipment which:

(1) Is held under a facilities contract of the Department;

(2) Is not readily severable;

(3) Is a separate building or a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a defense contractor carries on part or all of his defense production.

b. By the Corps of Engineers. Where disposal of structures, as well as other plant equipment located within such structure, is to be accomplished by the Corps of Engineers, instructions will be issued as to the extent to which the Corps of Engineers will participate in such action. Subject to special instructions by DAEN-REM, the following coordinated actions will be taken: *

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(1) The using service will report to the Corps of Engineers the property which is excess to the Department's needs.

(2) The excess directive report will include the designation by name and address of a responsible officer of the using service to join with the DE concerned as a representative of the Chief of Engineers. These two representatives will meet with the contractor within seven days of their appointment to determine his interest in acquiring all or any part of the facilities. This determination will be made in the shortest possible time.

(3) The meeting with the contractor will promptly establish those facilities to be retaind by the contractor and those to be declared excess. Waiver of existing options will be obtained where necessary.

(4) Equipment that is of no interest to the contractor will be disposed of by using service in accordance with applicable regulations.

(5) Custody of and accountability for the entire facility remains with the using service until other arrangements have been completed.

(6) The Corps of Engineers will complete negotiations for property to be retained by the contractor as rapidly as possible.

(7) When an agreement has been reached with the contractor, the DE or his contracting officer may execute the supplemental agreement to the lease or facilities contract transferring improvements, including machinery and equipment as a unit. Authority for the transfer should be recited in the supplemental agreement. In the case of a supplemental agreement to a facilities contract, authority will be obtained from the using service through its local representative for the DE or his contracting officer to sign the supplemental agreement transferring the improvements, including machinery and equipment to the contractor, (Figure 11-18 is the suggested format for Supplemental Agreement to Emergency Plant Facilities Contract.)

(8) Upon completion of negotiations, the responsible DE will issue instructions to the using service to dispose of equipment not included in the final negotiations in accordance with applicable regulations. Accountability for the property will be transferred at this time to the new owner or, in the case of real property retained by the Department, to the Corp of Engineers.

(9) Property not disposed of to the contractor will be disposed of in the same manner as improvements located on surplus leasehold property. *

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11-177. Procedure for Disposal of Surplus Chapels. By direction of the President and pursuant to GSA and Army regulations, special procedures have been established for disposal of chapels. Surplus chapels must be segregated from other buildings for sale intact, separate and apart from the land, for use as shrines, memorials, or for religious purpses. Where the chapel is located on surplus land and it is determined the chapel may properly be used in place, a suitable area of land may be set aside for such purposes and sold with the chapel (Section IX Supra).

11-178. Soliciting Applications for Purchase of Chapels. Promptly upon receipt of an approved DA Form 337 (Request for Approval of Disposal of Building and Improvements) or AF Form 300, the DE will solicit applications by public advertising. Advertising will consist of publication of notice in newspapers, paid advertising when necessary, posting of notices in public places, and mailing of invitations to all known local churches. A period of thirty (30) days will be allowed in which to file written applications. Instructions will provide that the applicant will give his name, address, and denomination if applicable. The advertisement will describe the chapel, give its location, terms and conditions of sale, and the time and place where application must be filed. The advertisement will also state that the sale price will be made available upon request of interested parties, and that the Chief of Chaplains will select the purchaser. To assist that office in making a recommendation, the following information should be included in applications for the purchase of chapels:

a. Purpose and intent of the use of the chapel.

b. Facilities currently being used by the church/organizaton applying.

c. Membership size of the church/organization.

d. History of the church/organization and when established locally.

e. Denomination and/or organization.

11-179. Conditions of Sale of Chapels. When sold under the provisions of paragraph 11-180, chapels shall be sold subject to the condition that during their useful life they will be maintained and used as shrines or memorials or for religious purposes, and not for anycommercial, industrial, or other similiar use. The contract or deed of sale will provide further that in the event the purchaser fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference, if any, between the appraisal fair market value of the chapel, as of the date of the sale, without restriction on its use, and the price actually paid. This difference should be figured at the time of sale and included in the contract of sale or deed of conveyance.

11-180. Determining Price and Provisions of Sale for Chapels.

a. Price. The sale price of the chapel structure in the case of sale for use as a shrine, or memorial, or denominational house of worship, will be at its fair value in the light of the conditions imposed relating to its future use, and the estimated cost of removal from the site. Appraisals made to establish the price of specific chapels will be predicated on:

(1) The fair value of the material in place, less the cost of dismantling, removal of the material to the outside limits of the installation, and the cost of restoring the site.

(2) The restrictions imposed on the future use of the chapel with due regard to the difference between the fair value price obtainable in the open market and that which might be obtainable in the limited market to which sale is restricted.

(3) In addition to the criteria set forth in (1) and (2) above, cognizance will be taken of the prevailing prices of chapels being sold by other disposal agencies within the general area in which chapels are being disposed of by the Corps of Engineers.

b. Provisions of Sale.

(1) Disposal of chapels which are not excess or surplus will be conditioned on the removal of the chapels from the premises. In the disposal of chapels located on excess or surplus leased land, no commitments will be made to purchasers for the continued use of utilities and services (sewer, water, electric, fire protection, guarding). Arrangements may be made between the lessor of the premises and the purchaser to leave the chapels in place, provided the lessor releases the Government from any and all obligations to restore the premises occupied by the chapel.

(2) Care will be exercised that, prior to the disposal of the chapel, equipment such as organs, hymn books, and other ecclesiastical furnishings have been removed or shipped in accordance with applicable regulations.

(3) All copies of the contract evidencing the sale of chapels will be accompanied by copies of the instructions, if any, received from the Chief of Chaplains authorizing the disposal. If no such instructions have been received, the DE will attach a statement that in the absence of instructions, all known interested parties have been contacted and that the disposal has been made after due consideration of applications, the uses to be made of the chapel building and the need therefor. *

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11-181. Coordination with the Chief of Chaplains. The DE will submit applications for the purchase of chapels to DAEN-REM, who will request the Chief of Chaplains to select the purchaser and advise DAEN-REM of his selection. Where no applications are obtained as a result of the advertising, the DE will so advise the Chief of Chaplains, reporting steps taken to obtain a purchaser, and recommending that the chapel be sold without conditions, in the same manner as provided for disposal of other buildings. If the Chief of Chaplains does not approve this recommendation or issue other appropriate disposal instructions within a period of 60 days, DAEN-REM will be informed.

11-182. Report on disposal of Chapel. As soon as practicable after the sale has been consummated, notification of disposal of chapels will be made by the DE direct to the Chief of Chaplains, with a copy to HQDA (DAEN-REM) WASH DC 20314, by letter, which will contain the following information:

a. Location and brief description of chapel or chapels.

b. Reference to disposal instructions, if any, received from the Chief of Chaplains.

c. Identity of purchaser and price paid.

11-183. Release of Restrictions on Chapels Sold. Where the purchaser fails to maintain and use the chapel in accordance with the conditions of sale, or the purchaser requests release of the conditions, the facts will be reported to DAEN-REM with appropriate recommendations. DAEN-REM may release the purchaser from the conditions of sale without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was sold, or that such release will not prevent accomplishment of the purpose for which the property was sold.

11-184. Donation, Abandonment or Destruction.

a. General. Improvements may be abandoned, destroyed or donated to a public body, upon a finding in writing by the DE (but in no event shall such finding be made by the official directly accountable for the property) that the property has no commercial value or that the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, or that abandonment or destruction is required by military necessity, or by considerations of health, safety or security.

b. Finding of Fact. The finding will be prepared as a separate document headed: FINDING OF FACT FOR _____. The finding will be sufficiently complete within itself to justify the decision to donate, abandon, or destroy the property proposed, without outside reference. It will be drafted to provide, where the finding is made *

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by the District Engineer, for approval by the Division Engineer. Finding of fact concerning property which had an original cost in excess of $500,000 requires the approval of DAEN-REM. A copy of each such finding, so approved, will be forwarded by the DE to the regional office of GSA.

11-185. Donation to a Public Body. A public body, as defined by GSA for this purpose, means any State, territory or possession of the United States, any Political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, or any agency of the Federal Government. Property as to which findings of fact have been made, may be donated to a public body.

11-186. Abandonment. Abandonment, as used herein, has reference to cases where the lessor or a permittor Government agency is unwilling to accept transfer of buildings or improvements in lieu of restoration, but is willing to permit the Department to leave buildings or improvements having no net salvage value on their premises. It is desirable to transfer title of or accountability for improvements having no net salvage value to lessors or permittors instead of obtaining their consent to abandon such improvements. Abandonment as authorized herein will not be a means for dropping accountability or responsibility for maintenance of improvements on non-excess land.

11-187. Destruction. Disposal by the Corps of Engineers, as authorized in AR 405-90, does not contemplate expenditure of funds for destruction of improvements which have no sale or salvage value. Accordingly, where such improvement have been approved for disposal by the Corps of Engineers, they will be referred back to the appropriate Army or Air Force command for disposal action under AR 405-90 or AFR 87-4 as appropriate. However, improvements with little or no salvage value may be included in the same item with other improvements being offered for sale which are more attractive improvements without an expenditure of Government funds.

11-188. RESERVED.

11-189. RESERVED.

11-190. RESERVED. *

* SECTION XII. DISPOSAL OF STANDING TIMBER, CROPS, AND EMBEDDED GRAVEL, SAND AND STONE

11-191 Authority.

a. Crops. Crops are defined as personal property in FPMR Section 101-47.103-12 and are disposed of under FPMR Section 101-45.309-1 (Sale, Abandonment, or Destruction of Personal Property). The Corps of Engineers does not dispose of crops on military lands. However, when lands are in the custody of the Corps for construction purposes, the Corps will dispose of crops thereon.

b. Standing Timber, Embedded Gravel, Sand or Stone. These are defined as real property (FPMR Section 101-47.1O3-12(c)). The holding agency is designated as disposal agency for standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land. (FPMR Section 101-47.302-2) .

c. Small Lots of Standing Timber. In accordance with AR 405-90, installation commanders are authorized to sell small lots of standing timber with a value not more than $1000 that are in conformity with the installation Forest Management Plan. Public notice is required of the availability of the timber for sale. The total of such sales in any one calendar year will not exceed $10,000.

d. Restriction on Removal of Sand, Clay, Gravel, Stone and Similar Material. The Army is without authority to remove such products from public domain land located within the military installation where the material is to be used off the installation. With permission of the Secretary of the Interior, such material may be removed pursuant to 30 U.S.C 601. In such cases, DAEN-REM will obtain the necessary permi-sion.

11-192. Determination of Excess Status.

a. Military. The procedure for excessing and disposal of standing timber and embedded gravel, sand and stone is outlined in AR 405-90. The procedure for the determination of availability of timber for dispo-sal is outlined in AR 420-74.

b. Civil Works.

(1) When the DE believes that standing timber, embedded gravel, sand or stone (whether designated for disposition with the land or by severance and removal from the land) is excess to requirements, he will submit a recommendation to DAEN-REM for approval. The DE is authorized, however, to dispose of standing timber or other forest products *

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required to be removed incident to construction and operational requirements of the project; that which is generated incident to recreational development or the management of public park and recreational areas or wildlife management areas; or that which is generated is accordance with approved forest management supplements to the approved Master Plan (ER 1130-2-400). As far as practicable, high grade species in short supply will be not be disposed of, but will be retained for possible defense requirements. When the amount for sawtimber under the above criteria available for disposal exceeds 5,000,000 board feet, request will be made to DAEN-REM, for determination of whether there are any defense requirements for the timber. The request will include an estimate of the amounts by species and the range in sizes. All timber disposals, except those involving timber below the project clearing line or in construction sites, will be compatible with the planned use of the areas for the purpose to which they are allocated in approved Master Plans and such disposals will be incidental to that use. The DE may authorize the disposal of growing crops when their disposal is deemed necessary to prevent waste.

(2) Under the provisions of Section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), proceeds from disposal of these items on civil works property may be returned to the appropriation.

11-193. Methods of Disposal. Standing timber, crops, sand, gravel, or stone-quarried products, authorized for disposal in accordance with the foregoing, will be disposed of by transfer to another Federal agency or by sale.

11-194. Disposal Plan for Timber. The DE will take appropriate action to assure that construction contractors are not authorized, in the clearance of construction sites, to burn or otherwise destroy merchantable timber unless circumstances exist which preclude sale or salvage. In preparing for disposal of timber, a disposal plan will be prepared which will include the following:

a. Live timber and merchantable dead timber will be marked for cutting in accordance with the land management plan, Master Plan, or forestry supplement thereto, and cutting will be limited to the timber so marked. The disposal plan will contain sufficient information in this respect to permit preparation of specifications for inclusion in the invitation for bids.

b. Utilization of existing roadways and construction of new roads and saw mills should be limited to the minimum necessary.

c. Requirement that the customary practices in elimination of fire hazards be observed with necessary specifications therefor. *

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d. The installation commander will be consulted to obtain his desires in connection with security measures, and other matters affecting the installations, and the requirements of such measures will be set forth specifically.

e. Any measures considered necessary to protect timber and young growth not marked for cutting will be specified.

f. Where an appraisal is required, the appraisal report will be prepared by a competent forester. The report will indicate the number and size of each species and classification of trees to be cut; the estimated board feet in log scale measurement; linear estimates of pole timber, and amount of cord wood. The appraiser should indicate in the appraisal report what, in his opinion, should be acceptable as a mininum price for different types of timber, as well as a total or lump sum estimate for the whole. Methods of administration and sale of timber by the Army or Air Force should follow the same general rules employed by the U.S. Forest Service in its sales and forestry practices. U.S. Forest Service personnel may be available for this work, if desired, on a reimbursable basis, provided the size of the area in question and the location render such arrangements feasible.

g. Minor sales, involving lots with an estimated value of $1000 or less, may be accomplished by the reservoir manager on civil works projects under general guidance issued by the Real Estate Branch. In such minor sales, two or more informal bids, in writing, will be obtained, if possible. If only one bid can be obtained, the proposed sale will be posted for a period of ten (10) days.

11-195. Disposal Plan for Embedded Gravel, Sand or Stone. Prior to offering sand, gravel, or stone for disposal, a disposal plan will be prepared, which will include the following:

a. Control of transportation facilities which will limit use of roads and construction of new roads to the minimum necessary.

b. Security measures established by consultation with the installation commander to properly protect Government property and other interests of the Government.

c. Where applicable, the depth or level to which the material may be removed, and any restoration of the site after removal.

d. Specifications as to methods to establish amount of material removed for the purpose of payment. *

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e. With certain exceptions as discussd in paragraph 11-234d, infra, an appraisal report will be prepared by a person familiar with the material involved and the operations for mining, quarrying or otherwise removing it, giving the type or grade of material involved and an opinion as to the minimum price that should be acceptable.

11-196. Procedure for Transfer to Another Federal Agency. As soon as possible after standing timber, embedded sand, gravel, or stone are made available for disposal, other Federal agencies having activities within the vicinity of the location of the property and which, in the opinion to the responsible DE, may desire transfer of the property will, to the extent practical or economical, be notified of the availability of the property for disposal. Such notification should include the following: information concerning how arrangements can be made to inspect the property; information concerning conditions governing cutting, harvesting, mining, or removal of the property and a statement that the property will be advertised for sale upon the expiration of fifteen (15) calendar days from the date of the notification, unless a request for transfer of the property, or a statement that a request for transfer of the property, or a statement that a request therefor may be made, is received within the fifteen (15) day period. Should a Federal agency request within the fifteen (15) day period, that disposal of the property be withheld pending determination of a requirement, disposal will be withheld not longer than sixty (60) days from the date of notice of availability, unless DAEN-REM approves withholding disposal for a longer period. Disposal will not be withheld for such sixty (60) day period, extended if applicable, if to do so would interfere with construction or other necessary operations. Should a request be received from a Federal agency for transfer of the property, the property will be transferred in accordance with existing procedures without reimbursement except as provided by FPMR Section 101-47.203-7. If no request for transfer is received, the property will be considered surplus and disposed of by one of the methods outlined in succeeding paragraphs. The foregoing instructions do not apply to land clearance operations performed either by contractor force account. It applies only to those cases where it is proposed to offer property for sale.

11-197. Sales. DEs will be governed by the general procedure set forth in Section XIV in selling standing timber, growing crops, embedded sand or gravel or stone products.

11-198. Agreement with Small Business Administration (SBA) on Sale of Timber. The Department of Defense has entered into an agreement with the SBA for the development of a program of assistance for small concerns operating in the timber business. This agreement is published for compliance as Figure 11-19. In the implementation of this agreement, *

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the DE will cooperate with field representatives of SBA to the fullest extent compatible with efficient administration of the Army's timber disposal program.

11-199. Status as Small Business.

a. Definition. Each invitation for bids for the sale of timber with an estmated value of $2,000 or more will contain a definition of small business and provision for self-certification of the bidder's status within its terms. A definition for use in invitations for bids on Army timber is provided in the "Certificate as to Small Business Status" (Figure 11-20).

b. Self Certification. The Code of Federal Regulations (13 CFR 121.3-9(c)) provides: "In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved."

c. Definition for Set-Asides. The definition of small business provided in Figure 11-20 omits portions of the definition prescribed by SBA regulations which are not presently applicable to sales of Army timber. The omitted portions relate to sales of timber reserved for or involving preferential treatment of small business (para 11-202). These portions of the definition are subject to frequent revision by SBA.

11-200. Information for SBA on Timber Sales. Representatives of SBA will visit District offices from time to time for purposes of coordination and assistance; to furnish names and information on prospective bidders from the SBA facilities list; and to obtain information on programmed sales of Army timber. In addition to the information which may be furnished during the course of these visits, the following items of information will be furnished to appropriate SBA field offices on each sale of timber products with an estimated value of $2,000 or more:

a. Advice on proposed or prospective timber sales of Army timber.

b. Copies of invitation for bids.

c. Name of successful bidder, his status as a small business, the bid price, and an estimate of the amount of timber sold.

11-201. Certificate of Competency by SBA Section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b) (7)) authorizes the SBA to certify the competency of a small business concern as to capacity and credit. In any case where timber is being sold on a credit basis, if the bid *

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is being questioned solely on the financial ability of the bidder and the bidder is a small business concern, the DE will notify the appropriate SBA field office immediately and follow the other procdures provided by Section III of the DOD-SBA Agreement (Figure 11-19). A certificate of competency issued by SBA will be honored in such cases.

11-202. DA-SBA Joint Set-Aside Determination. Section 15 of the Small Business Act (15 U.S.C. 644), provides that where certain joint determinations are made by the SBA and a disposal agency, the award of a contract for the sale of Government property shall be made to a small business concern. Section IV, Joint Set-Aside Determination of the DOD-SBA Agreement implements Section 15 of the Small Business Act. It is not anticipated that SBA will recommend that Army timber be reserved or set aside for sale to small business concerns on an exclusive or preferential. basis. In the event recommendations on set asides of Army timber are received from SBA field offices, the SBA recommendations will be forwarded promptly to HQDA (DAEN-REM) WASH DC 20314 with DE comments and recommendation.

11-203. RESERVED.

11-204. RESERVED.

11-205. RESERVED. *

SECTION XIII. CLEARANCE OF EXPLOSIVE HAZARDS AND OTHER CONTAMINATION FROM PROPOSED EXCESS LAND AND IMPROVEMENTS

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11-206. Clearance of Air Force Lands. The Chief of Engineers has no responsibility for inspecting or clearing excess Air Force land of explosives or chemical/biological contaminants. When a target or bombing range, or other land under the control of the Department of the Air Force, which might be contaminated with explosives or other harmful or dangerous substances, becomes excess to Defense requirements, the appropriate DE will obtain a certificate as to the extent of contamination and clearance thereof from the Commander, Air Force Logistics Comnand (AFLC), Wright-Patterson Air Force Base, Ohio 45433. The Corps of Engineers will continue to be the agency with which the disposal agencies, purchasers, and former lessors will communicate when explosives or objects resembling explosives, are discovered on the land after disposition has been effected. The AFLC, upon request of the DE, will neutralize or remove such objects or substances and make a report to the requesting agency or person. See paragraph 11-225 infra, for supprt required of the Corps.

11-207. Clearance of Army Lands. The responsibility for performing clearance of ordnance contaminated excess Army military real property is placed upon and remains with the using command. That command, after completion of the clearance work, will furnish the DE a "Statement of Clearance" (Appendix E, AR 405-90) and a record of the clearance work performed. In addition to the Statement of Clearance, the following information will be furnished to the DE upon completion of the neutralization:

a. Records of the neutralization work performed, including statement of methods employed.

b. List of dangerous and explosive materials removed.

c. Number and names of demolition technicians employed.

d. Other data that may be pertinent in the defense of any suit or claim that might subsequently arise as a result of civilian occupancy.

11-208. Determination of Categories. Prior to making a recommendation for excess, the state of contamination of the property must be determined by the installation commander as either of the following:

a. Category One. Those lands such as ammunition plants, storage, test, impact and training areas, bombing or target ranges, which may contain explosives or unexploded ordnance. The report will include proposed methods of neutralization and the costs thereof. *

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b. Category Two. Those lands or buldings which are suspected of being contaminated with radiological, industrial-military chemicals, or explosives. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), Aberdeen Proving Ground, Maryland 21010), will be requested to determine if the land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for dispsal.

11-209. Responsibilities.

a. Category One. The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety viewpoint clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomp lished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN-REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of "Prior Approval" for those disposals requiring reports to the Armd Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this chapter. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN-REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

b. Category Two. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all land and/or buildings where an excessing action is planned. USATHAMA will conduct the survey and assessments of all proposal excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations

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of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the MACOM to DAEN-REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700-4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminate facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700-4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

11-210. Contaminated Industrial Property.

a. GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of OCE, or the property may be withdrawn from excess and returned to the using command for care and custody.

b. A Statement of Clearance is required for industrial property to be declared excess in order to establish a qualitative and quantitative base line for the contaminants present. In the Statement, USATHAMA will provide an adequate description of the nature and extent of the contamination. The description furnished to the DE should include the following information:

(1) Name and location of installation.

(2) Date of final clearance.

(3) Reference to attached real estate map showing locations of contaminated, cleared and restricted areas. The map(s) will be attached to the description of contamination.

(4) Statement that the area has been cleared of toxic and hazardous materials reasonably possible to detect either by present state-of-the-art methodology or by a visual inspection. *

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(5) Recommendation as to whether the land or structures may be used for any purpose for which it is suited, clearly identifying any areas recommended for restricted use and listing restricted tract and building numbers.

11-211. Limitations on Clearance Cost. The following principles are established for determination of the financial limit of clearance operations at excess installations:

a. Government-owned land. Clearance work will not be undertaken where the estmated cost thereof exceeds the value of the land after decontamination plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

b. Leased land. Clearance will not be undertaken where the estimated cost, plus the cost of any other required land restoration work, exceeds the value of the land after clearance and restoration plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

11-212. Clearance of Military Scrap. Military scrap can contain or be contaminated with explosives, chemcals, and other hazardous materials. The primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by usung command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN-REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

11-213. Restricting Future of Artillery and Other Ranges. Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no knowndefinite period within which such projectiles will become inert through

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weathering and corrosion, such contaminated areas can be safely released for restricted use only, even after decontamination work as been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered safe for any use, disposal action will be suspended and the facts will be reported to DAEN-REM-C with the DE recommendations.

11-214. Reporting Contaminated Land to the General Services Administration. Contaminated areas, except industrial properties as covered by paragraph 11-210, will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

a. The extent and type of such contamination;

b. Plans for decontamination, if any; and

c. The extent to which the property may be excessed without future decontamination.

11-215. Statement of Clearance in Reporting Excess Property to GSA. The Report of Excess will include the Statement of Clearance furnished by the using command (paragraph 11-207). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale or lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destroy any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

11-216. Reporting Target Ranges. All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner: *

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a. If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

b. If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

11-217. Recording Statements of Clearance. On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN-REM and DAEN-REP.

11-218. Return of Contaminated Leased Land to Owners. Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in paragraph 11-215.

a. Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

b. As stated in paragraph 11-215, the owner should be advised that the Department is willing to remove or destroy any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

11-219. Supplemental Agreement with Owner of Contaminated Leased Land. In the event that it becomes necessary to pay damages to a lessor in lieu of restoration i.e., decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises. *

SUGGESTED CLAUSE FOR USE IN SUPPLEMENTAL AGREEMENT

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WHEREAS, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

(Legal Description; utilize hachured/annotated maps(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of lessor), of dollars ($_____), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and covenant, in consideration of the payment, to use the land for such purposes only.)

11-220. Conditions in Conveying Land Suspected of Contamination. The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or toxic materials and is restricted to surface use: (GSA should be requested to include these conditions in deeds that they prepare.)

WHEREAS, said property was a part of (Name of Installation), a military installation used for _____, and portions of this property were subject to contamination by the introduction into the said installation of bombs, shells and other charges (insert reference to toxic chemical/biological agents, if applicable) either below or upon the surface thereof; and

WHEREAS, the grantor has caused the property to be inspected and has decontaminated the said property to the extent deemed reasonably necessary, and, to the extent deemed consistent with sound economic limitations, has cleared the property of all dangerous and explosive materials and/or chemical/biological agents, reasonably possible to detect, and has made certain recommendations pertaining to the use *

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to which the land may be devoted, and the said recommendations are contained in a statement, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the grantor, by attaching such statement, does not intend to make, nor shall it be construed to have made, any representations or warranties pertaining to the condition of the land; and

WHEREAS, the hereinafter-designated grantee has entered into a contract to purchase said property with full knowledge of, and notwithstanding the foregoing recitals which are incorporated for the purpose of disclosing the former use made of the property hereinafter described; and

WHEREAS, by acceptance of this instrument, the grantee admits and confesses to full knowledge with respect to the facts contained in the foregoing recitals as to possible contaminated condition of the property;

NOW, therefore, by acceptance of this instrument, and as a further consideration for this conveyance, the grantee here covenants and agrees for himself, his heirs, successors, or assigns, to assume all risk for all personal injuries and property damages arising out of ownership, maintenance, use, and occupation of the foregoing property; and further covenants and agrees to indemnify and save harmless the United States of America, its servants, agents, officers, and enployees, against any and all liability, claims, causes of action, or suits, due to, arising out of, or resulting from, immediately or remotely, the possible contaminated condition, ownership, use, occupation, or presence of the grantee, or any other person, upon the property, lawfully or otherwise.

11-221. Warning to Public of Danger in Handling Explosive Missiles. When any land which has been contaminated with exploslve objects, or chemical/biological agents, is released for disposal to, or use by, the general public in addition to the clearance statement furnished to the disposal agency, the DE will publicize, to the fullest extent practicable, the possibility of contaminants remaining on the land and the inherent danger of handling explosives or other contaminants. Such publication should be in the form of articles in official news media, or posting of the premises whenever the latter is considered most feasible. Such publicity should include instructions that, in the event of the discovery of an explosive missile, or an object resembling an explosive missile, or other contaminant, or in the event of an injury caused by an explosion or exposure to toxic agents, such discovery or injury should be reported immediately to the DE. An effort should be made to obtain the cooperation of local law enforcing agencies to *

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insure the prompt reporting of an accident, or the discovery of an explosive missile. The majority of accidents are the result of the removal of explosive missiles by individuals for sale to scrap dealers. Scrap dealers in the vicinity of contaminated lands should be informed of the inherent dangers and asked to cooperate by refusing to buy military scrap from private parties.

11-222. Reporting Accidents. Immediately upon receipt of information of an accident involving, or appearing to involve, explosive or chemical/biological elements remaining on, or carried from an excess or surplus installation, whether under the jurisdiction of the Corps of Engineers, other Government agency, or sold or returned to public or private owners, the DE will institute an investigation and prepare a report prescribed by AR 385-40 and OCE Supplement thereto. Further, upon determination that an accident has occurred, the former using command should be requestd to send qualified explosive, chemical or biological specialists to the scene of the accident immediately, in order that proper corrective measures to eliminate future accidents may be instituted. HQDA (DAEN-REM) will be immediately informed, by teletype, of any accidents due to explosives on lands which have been used by the Department involving injuries to persons and/or animals, or damages to private property.

11-223. Contamination Discovered After Return of Land to Owner, or Sale. When land has been previously declared clear of explosives or other dangerous material so as to be safe for all uses and disposed of, but is later found to have been contaminated to such an extent that, in his opinion, it is dangerous to the public, the DE will request the former using command to re-examine the land for the purpose of determining the extent to which the original Statement of Clearance should be revisal and to determine the kind and cost of any further clearance work by the using command which would be required to place the property in the condition set forth in the original Statement of Clearance. If further clearance work is necessary and considered economically justified, the DE will request the using command to perform such work and furnish a new Statement of Clearance and record of the further clearance effected. If further clearance work is not considerd economically justified, he will make a report thereof to DAEN-REM with his recommendations and pertinent supporting data. Recommendation for reacquisition of contaminated lands will be limited to those which involve full restrictions of both surface and subsurface uses. Where subsurface use of lands only is to be restricted, it is preferable to make compensation to the owners through claim procedure, when and if instituted by the owner on his own initiative. *

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11-224. Return of Public Domain Land.

a. General. The procedures described elsewhere in this section to carry out the continuing responsibility of the Department of the Army to assist and advise the land holder and protect the public from dangerous substances on or in the land after release are equally applicable to public domain lands. Air Force policy and procedures are generally comparable.

b. Congressional. A provision has been added to several laws enacted by Congress that upon request of the Secretary of the Interior at the time of final termination of the reservation effected by the Act, the Department of the Army shall make safe for nonmilitary uses the land withdrawn and reserved, or such portions thereof as may be specified by the Secretary of the Interior, by neutralizing unexploded amunition, bombs, artillery projectiles, or other explosive objects and chemical agents. The intent of the provision is explained by a statament of the Committee on Interior and Insular Affairs, House of Representatives, in Report No. 279, 87th Congress, lst Session: The committee concluded that it would be appropriate to amend the bill to designate the Secretary of the Interior to act on behalf of the Federal Government in delineating the areas to be made safe for nonmilitary use when the lands are no longer required for defense purposes. "It is expected that the Secretary of the Interior will not require the Department of the Army to proceed with expensive cleanup work in areas where there would be no direct benefit. On the other hand, it is anticipated that when potential resources or use values are such, as to make dedudding or decontamination advisable, the Secretary of the Interior will identify those resources and values for the Secretary of the Army. This will permit a full and complete justification in the event that a separate appropriation therefor is required." Report No. 279 also quoted the following policy statement by the then Bureau of the Budget: "... requirement for decontamination should be related to a standard not only of practicability, but also to one of economic feasibility that takes into account the desired future use and value of the land to be decontaminated."

c. Army. The congressional policy outlined aboved does not change the existing Army policy. Its principal effect is to make it clear that the Secretary of the Interior has an equal interest with the Secretary or the Army in the final decision on whether it is practicable or feasible to clear lands for return to the public domain, and the extent of clearance. No difficulties in reaching agreement with Interior in these matters are anticipated. Where large expenditures are involved, it will usually be necessary to request a special appropriation, leavinq the final decision to Congress. In any instance, if difficulty in *

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reaching agreement with officials of the Bureau of Land Management (or the Secretary of the Interior) should occur, it will be reported promptly to DAEN-REM with complete background data for review and instructions.

11-225. Support in Clearance of Air Force Lands. Where Air Force range lands are proposed for disposal, the AFLC, in most cases, will make an economic study to determine the extent of clearance that is justified by the relative values of the property before and after decontamination. For this purpose, AF comands declaring range lands excess will submit a copy of the excess recommendation to the AFLC. Upon request, the DE will prepare and furnish a disposal planning report to the AF Logistics Command for assistance in making the economic study. The disposal planning report will include, but need not be limited to, the following:

a. A map which depicts and annotates differing areas according to their estimated highest and best use.

b. An appraisal report reflecting the fair market value of each of the differing areas based on their highest and best use, and based on the assumption that the lands are entirely free of dangerous materials or other contamination. AFLC will compare such evaluation with cost of decontamination work. While needed primarily in connection with the return of AF range lands to the public domain, economic studies may be made and disposal planning reports requested by the AF in other areas.

11-226. RESERVED.

11-227. RESERVED.

11-228. RESERVED. *

11-229. RESERVED.

SECTION XIV

SALE PROCEDURE

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11-230. Advertising.

a. Definition and Purposes. GSA regulations require that disposal agencies shall widely publicize all surplus real property which becomes available for sale. Sales will be made to the highest responsible bidder after advertising. Advertising consists of the preparation of Invitation for Bids, the posting of copies thereof in public places, their distribution to interested persons or prospective bidders, and publication of notice of sale in newspapers where such publication is deemed advisable or is required by this chapter. The purpose of advertising and obtaining competition in selling Government property is:

(1) To give all qualified persons equal opportunity to bid for the property.

(2) To secure for the Government the benefits which flow from competition.

(3) To prevent criticism that favortism has been shown by officers or employees of the Government in making sales of public property.

b. Notice to Department of Commerce. A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of all the property included in the advertisement is less than $5,000, shall be prepared for publication in the U.S. Department of Commerce publications, "Commerce Business Daily." Guideline is contained in the Defense Acquisition Regulation (DAR) 1-1005.1, (formerly the Armed Services Procurement Regulation). Forward statement to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, Illinois 60680.

c. Procedure. Whether newspaper advertising in addition to distribution and posting of Invitation for Bids is desirable will depend upon the value of the property and in some instances the anticipated interest in the property. The ever-changing market requires different methods or efforts to obtain the best price for the Government. The time allowed for submission of bids will depend upon the time available, usually 30 days. If available, a longer period may be desirable based on value and other factors. A shorter period may be necessary and, in an emergency, a period of less than 10 days may be allowed. However, the contracting officer should make a record of written findings to support such a decision. If the emergency is based on requirements of the using command that appear questionable, a report with recommendations should be forwarded to DAEN-REM by the most expeditious means. *

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d. Bidders Mailing Lists. Instructions contained in procurement regulations are applicable generally for establishing, maintaining, and controlling bidders mailing lists (DAR 2-205). Generally, all proposed sales should be preceded by an advance notice, to eliminate disinterested bidders and as a measure of economy in printing and distributing voluminous Invitation for Bids. Notice to bidders will provide that their failure to respond to two successive sales offerings will result in the removal of their names from the bidders list. When time does not permit an advance notice, one copy of the Invitation may be sent to the potential bidder, which contains the following notice: "Attention Bidders. If interested in bidding on any or all items, three (3) additional copies will be furnished on request." The advance notice will describe the property offered and ordinarily provide that Invitation for Bids will be mailed on request or may be picked up at the installation or project at the time the property is inspected.

e. Inspection of the Property. Upon request, interested persons should be permitted to make appropriate inspection of the property, including inventory records, plans, specifications, and engineering reports, subject to any restrictions necessary in the interest of national security and to such reasonable rules as may be prescribed by the using comnand or the DE.

11-231. Award of Contract.

a. Openinq of Bids. All bids shall be opened and publicly disclosed by a duly authorized representative of the responsible DE at the time and place stated in the Invitation and advertisements.

b. Award and Notice to Bidders. Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, provided that any or all bids may be rejected when it is in the public interest to do so. When an award is made, unsuccessful bidders should be notified promptly and their earnest money deposits returned.

c. Equal Offers. Equal offers mean two or more offers that are equal in all respects taking into consideration the best interests of the Government. When equal acceptable offers are received, award shall be made by a drawing by lot limited to the equal acceptable offers received (See also paragraph 11-232.)

d. Public Auction. When authorized by GSA, sales of surplus property may be made through contract auctioneers. Consideration should be given to auction sales when there is likely to be considerable interest in the property. GSA Regional Offices have had experience with actions, maintain lists of qualified auctioneers, are in a position *

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to give other advice and assistance, and may authorize auction sales on behalf of GSA, pursuant to FPMR, Section 101-47.3O4-7. Auctioneers retained under contract shall be required to publicly advertise for bids in accordance with applicable provisions of that regulation. The prior approval of DAEN-REM will be obtained before auction sales are undertaken.

11-232. Application of Anti-Trust Laws. The Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more (or personal property with an acquisition cost of $3,000,000 or more) or patents, processes, techniques, or inventions, regardless of cost, shall not be disposed of to any private interest until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the anti-trust laws. Prior to obligating the Government on any such disposal, Division Engineers will furnish DAEN-REM information on the probable terms and conditions of the sale. DAEN-REM will use the information as the basis for a request to the Attorney General for advice. Under the provision cited, the Attorney General is allowed up to 60 days to furnish the advice requested. The Federal Property Management Regulation, Section 101-47.301.2 provides guidance on the information to be furnished. Where identical bids in excess of the $2,500 are received, FPMR, Section 101-47.304-8 provides for a report to the Department of Justice. Section 101-47.304-8 provides guidance for such reports to be addressed to the Attorney General, WASH, DC, 20530.

11-233. Determination of Acceptable Offers After Advertising.

a. Generally an acceptable offer is one which:

(1) Is submitted by a responsible bidder.

(2) Conforms to the Invitation for Bids.

(3) Equals or exceeds the appraised fair market value of the property.

(4) Was independently arrived at in open competition.

b. A formal appraisal is not required where real property components:

(1) Are to be offered on a competitive sale basis that will adequately test the market.

(2) Are at the same location and are to be sold under a single advertisement. *

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(3) Have a total estimated fair market value of $10,000 or less for all property to be sold.

The determination as to necessity for a formal appraisal because of the $10,000 limitation may be made by an experienced real estate employee who need not be a real estate appraiser. This determination may be in the form of a simple written statement that in the judgment of the signer the property is not considered to exceed $10,000 in value. In these cases, awards will be supported by a determination by the DE that the market was adequately tested, and the price bid reasonable. For the purpose of records and reports, the sale price will be recorded as the fair market value. If it appears the market was not adequately tested, bids will be rejected and the property readvertised, or, if time does not permit readvertising, a sale may be consummated using the procedure provided in d and e below.

c. All land, irrespective of estimated value, and all other real property and components with an estimated value in excess of $10,000 will be appraised. Where an acceptable offer, as defined in a and b above, is not received for such property as a result of public advertising, it will be readvertised unless the responsible DE determines, based upon written findings which shall be preserved as part of the permanent file, that further public advertising will serve no useful purpose.

d. Where no acceptable bid is received as a result of the second advertising, or a determination was made that further advertising would serve no useful purpose or is not feasible, the DE may negotiate a sale at the highest price obtainable, provided:

(1) All bids are first rejected.

(2) The total of the appraised value for all property included in any single sales contract does not exceed $1,000.

(3) All past bidders, on any of the items, and any other known interested parties are afforded a fair opportunity to participate in the negotiations.

(4) The sale price is in excess of the highest bid received as a result of advertising.

(5) In his opinion the price is reasonable.

e. Where the appraised or estimated value of all items to be included in a single sales contract exceeds $l,000, and no acceptable bid is received, the high bidder may at the discretion of the DE be given a reasonable period, not to exceed five working days, to *

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increase his bid. At the same time all other bids shall be rejected and bid deposits returned. If the high bidder increases his offer to an amount equal to the total appraised or estimated value of the items involved, the DE may consummate the sale. All other cases will be forwarded to DAEN-REM together with an opinion as to whether the market was adequately tested and the highest price offered is reasonable, and with recommendations as to the course of action to be followed. If a negotiated sale to other than the highest bidder is recommened, information for preparation of a report to the Government Operations Committees of Congress will be included, as required in paragraph 11-234C(2).

11-234. Negotiated Sales.

a. To Private Parties. Negotiated sales to private parties are not viewed with favor Generally, such negotiated sales will be approved only where an emergency exists that will not permit advertising, where advertising would serve no useful purpose, or where a negotiated sale is in the best interest of the Government. Emergencies which justify sales without advertising do not ordinarily justify sales without competition. Instances are rare where the emergency is such that time does not permit the oral solicitation of quotations from more than one source. In any sales which are made without benefit of advertising, competition by informal solicitation and quotation will be obtained to the maximum extent feasible under the circumstances. Such sales should be negotiated at the best terms obtainable and at not less than the appraised fair market value.

b. To Eligible Agencies

(1) Acts of Congress listed in the Federal Property Management Regulation, Section 101-47.4905 (Illustrations), authorize negotiated sales of surplus real property to states and other eligible public agencies listed therein. The Acts listed, except Section 203(c) (3) (H) of the Federal property Act (40 U.S.C. 484(c) (3) (H), cover special classifications of property for specialized use, the most important of which is disposal of airport property. The Section of the Act cited authorizes negotiated sales of surplus property to states, territories, possessions, political subdivisions thereof, or tax-supported agencies thereof, provided the appraised fair market value of the property and other satisfactory terms of disposal are obtained. (The other Acts listd in Section 101-47.4905 provide for disposal subject to conditions of use but without consideration, or at reduced consideration, except power transmission lines which are sold without conditions but at the appraised fair market value.) Notification that surplus property is available for disposal will be given to eligible public agencies for *

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all airport property and for any other property where there is reason to believe that an eligible public agency may be interested in the property or that the property may be adaptable to the agency's use (Section IX).

(2) Title l0, United States Code, Section 4682, authorizes the Secretary of the Army to sell obsolete or excess material at fair value to the National Council of the Boy Scouts of America. The Judge Advocate General has held that buildings and other improvements no longer required by the Department be sold to that organization at the appraised fair market value.

c. Authority to Negotiate

(1) The DE is authorized to dispose of land, improvements, related personal property and real property components (including standing timber and embedded sand, gravel, and stone-quarried products in their unmined or natural state) with an estimated fair market value of $1,000 or less by negotiated sale without advertising, provided that such action is within the purview of a and b above, and satisfactory terms of disposal can be obtained. Except as provided in paragraphs 11-233 and 234b, all sales are not less than the appraised fair market value. See d below for requirement for appraisal by contract.

(2) Another proposals to negotiate sales without advertising will be submitted to DAEN-REM for advance approval. In submitting such proposals, the nature of the emergency or other situation justifying the waiver of advertising will be clearly stated. The property involved will be adequately defined, and the appraised fair market value and proposed price will be set forth. Negotiated sales of surplus property with an appraised value in excess of $1,000 under provisions of the Federal Property Actcited in b(l) above, require submission of an explanatory statement to the Government Operations Committees of Congress. Under the FPMR, a statement must be submitted at least 35 days in advance of each such negotiated disposal. When required, the DE will forward a draft of statement to HQDA (DAEN-REM) for transmittal to GSA for submission to the Committees.

d. Appraisal by Contract. Pursuant to Federal Property Management Regulation, Section 101-47.304-9(b), where sales are to be negotiated under the authority provided by paragraph 11-234 a and b above, a contract appraisal should be obtained provided that the cost of such a contract would not be out of proportion to the recoverable value of the property and is in the best interest of the Government. If such is not the case, the head of the disposal agency, or his designee, may authorize any other appropriate method to obtain an estimate of fair market value. Requests for waiver will be forwarded to DAEN-REM. *

e. Record to Justify Waiver of Advertising

(1) A written justification for negotiated sales made under the authority of these instructions will be prepared and filed by the DE with the record of disposal in each case. A copy of Standard Form 1036 may be used for this purpose.

(2) Except for those cases covered by b above, the nature of the emergency compelling waiver of advertising, the reason why it was considered that advertising would serve no useful purpose, or why the negotiated sale was considered to be in the best interest of the Government, will be clearly stated. In cases where an explanatory statement is transmitted to the Committees on Government Operations, a copy of that statement will be furnished the appropriate GSA Regional Office and filed with record of the case as the required documentation of justification for waiver of advertising. DAEN-REM will make available to the DE necessary copies of such statements for filing or distribution.

11–235. Form of Invitation for Bids and Contract of Sale. Sale contract forms will be prepared by the DE conducting the sale. ENG Form 571–R, DA Invitation for Bids, Bid and Acceptance, Sale of Surplus Real Property (Figure 11-21) will be used as a guide in sales of bare land or improved land and related personal property. ENG Form 1038-R, DA Invitation for Bids, Bid and Acceptance, Sale and Removal of Buildings (or other Real Estate Improvements) Located At _____ Figure 11-22), will be used as a guide in sales of buildings and other improvements for removal from the site. These forms are designed for use in normal sales of land and real estate improvements pursuant to existing delegations of authority. The DE is authorized to change formats, to rearrange the sequence of paragraphs, and to add or to delete paragraphs in whole or part, as local circumstances require, but no substantive departure from the forms is authorized without prior specific approval of DAEN-REM. Whenever a sale is to be conducted pursuant to a special delegation of authority, and whenever the circumstances of a sale are such as to render use of these forms inappropriate, a form will be devised by the DE to meet the requirements of the particular sale involved, and forwarded to
* DAEN–REM for approval. ENG Form 4808, Minor Forest Products Sales Contract, will be used to sell timber byproducts. Copies will be furnished to the purchaser, District Financial Accounting Officer, head of project office and the resource manager or post forester. Minor forest products are defined as timber byproducts with a fair market value of less than $1,000. Suggested additional provisions and conditions for use in the sale of standing timber are contained in ENG Form 2140–R, Supplement to Standard Form 114 for Use in Timber Sales Contract (Figure 11–23). In preparing sale contract forms, the following instructions will be followed: *

a. A definite date and time will be set for the opening of bids.

b. Bids will be prepared in quadruplicate, all copies to be signed by the bidder.

c. The Invitation for Bids will require each bidder to submit with his bid a certified check, cashier's check, traveler's check, or United
* States postal money order drawn to the order of the "Finance and Accounting Officer, U.S. Army Corps of Engineers" for at least 20 percent of the bid. *
When the cash bid may be a small part of the total consideration (where such dismantling and restoration is involved), the DE should set a definite higher amount as a bid deposit. Also, in such cases a performance bond, adequate to discourage breach of contract after only partial performance, may be required.

d. For real property components the Invitation for Bids will require payment in full within seven days after the successful bidder is notified that his bid is accepted and, in any event, prior to removal of the property. The time specified for completion of payment for land will depend upon the sum of money involved.

e. Bids may be submitted for one or any number of items. Items or lots of real property will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Land, however, will not be subdivided solely for this purpose, and in the case of timber sales or sales of embedded sand, gravel and stone, it may not be feasible to have more than one purchaser operating in the same area. Further, it may not be to the Government's interest. Buildings will be offered for sale as single items whenever practicable but submission of bids covering specified groups as an item or all of the buildings may be permitted if the DE considers such a procedure is in the best interest of the Government. It may sometimes be advantageous to divide the buildings into appropriate groups and to permit bidding on individual buildings or on specified groups of buildings or on the entire lot. When such bids are permitted, the Invitation for Bids, ENG Form 1038-R, will be flagged to inform bidders that lump sum bids on the entire lot (and specified groupings, if this procedure is appropriate) may be made but will not be accepted unless the lump sum bid exceeds the total of the highest bids received on each item (or on the groupings).

11-236. Credit. Payment of the purchase price over an extended period of time should be considered only when the price is a considerable amount, and it may be to the Government's interest to extend credit. prior to offering property for sale on an extended payment plan basis, approval from DAEN-REM will be obtained. Extension of credit will be within the limitations of FPMR, Section 101-47.304-4. Credit cannot be extended, except to state or local governments, nor can any other special condition be applied, unless provision was made for it in the Invitation for Bids.

*

11-237. Extensions of Time. Granting an extension of time, where unusual or unforeseeable circumstances are not present, is contrary to the form of the Invitation for Bids, and amounts to the application of special conditions not provided for therein. This violates GSA regulations and the principles of fair competition. Adoption of the following guides in the development and administration of sales programs will help to avoid unjustified requests for extensions of time:

a. Establishment of realistic periods for completion of the sales contract.

b. Necessary and justified extensions to be authorized subject to posting additional bond to insure performance and payment of adequate consideration where use of Government land is involved.

c. Reasonable restrictions on resale of improvements at the site.

d. Prohibition against posting advertising signs and storage of salvaged material on the installation pending sale to other customers.

11-238. Abstract of Bids. At the opening of bids, DD Form 1501 or 1501-1 (Abtract of Bids) will be prepaired showing bid received, the amount for each item, and the total. The successful bid will be encircled in red or typed in red.

11-239. Payments. All payments should be in the form of cash, cashier's check, money order, traveler's check, draft, or any other form of payment not subject to stoppage or revocation. All such checks, money orders, or drafts should be drawn to the order of the "Treasurer of the United States. "

11-240. Sale To Employees or Military Personnel. The sale of Government real property will not be made to civilian employees or military members of the Department of Defense (including an agent, employee or member of the immediate family of such personnel) whose duties include any functional or supervisory responsibility for the disposal of real property under Army control.

11-241. Equal Opportunity - Sales of Timber, Embedded Sand, Gravel, Stone, and Surplus Structures. Consistent with Executive Order No. 11246 as amended by Executive Order No. 11375, every Government contract involving employment shall include provisions for equal opportunity in employment, in connection with the performance of work under the contract. The equal employment opportunity clause in DAR 7-103.18 will be included in all contracts and first-tier sub-contracts over $10,000 pertaining to the following real estate actions in the United States and its possessions, unless exempted under the provisions of DAR 12-805. *

*

a. Sale of standing timber.

b. Sale of embedded sand, gravel, and stone in their natural state.

c. Sale of surplus structures where an appreciable amount of dismantling and site restoration is involved.

11-242. Statement of Contingent or Other Fees. The instructions and procedures contained in Section I, Part 5, DAR, are applicable to the sale of Government-owned real property and will be followed. Where applicable the statement set forth in DAR 1-506 will be included in Invitation for Bids and Contracts of Sale and an identical signed statement will be secured from the prospective purchaser where the property is to be sold without advertising for competitive bids. In addition to the statement, Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing, or Resulting From Award of Contract) will be completed where either part of the statement is answered in the affirmative. The exceptions to the use of the statement and Standard Form 119 are set forth in DAR 1-506-3 and may apply generally to real property sales of the Army, Air Force and non-defense agencies except that the monetary limitation prescribed by DAR 1-506.3 is $1,000 insofar as sales or property of the Department of Energy are concerned.

11-243. Preparation and Distribution of Sales Documents and Reports of Sales.

a. Report of Funds Received. As funds are collected from sales, reports will be prepared pronptly. Sales may be allowed to accumlate to permit the making of fewer reports, but in no case will they go unreported longer than 48 hours. DD Form 1131 and supporting papers will be signed by the DE conducting the sale.

b. Numbering of Contracts. The numbering of contracts involving the receipt or expenditure of funds will be in accordance with ER l180-1-1 (ECI 30-203).

c. Documentation and Reports of Sale. The DE responsible for the sale will prepare and retain copies of documents pertaining to the sale, and will make required distribution of the following (see d below):

(1) Contract - one signed and two authenticated copies.

(2) DD Form 1501 or 1501C (Abstract of Bids)- one copy (not required for negotiated sales). *

*

(3) DD Form 1131 - four copies. All sales will be listed on DD Form 1131, extended if necessary. Separate forms are not required for each contract. When receipts from more than one contract are reported on one DD Form 1131, all related contracts will be attached to and transmitted with the form.

4) Standard Form 1036, Statement and Certificate of Award, attached to the original signed contract and the DE's copy of each contract, or separate statement justifying negotiation (paragraph 11-234, supra).

(5) Advertisement, if any - two copies.

(6) Bond, if any - two signed copies.

d. Distribution of Reports of Sale.

(1) Military Property. The finance officer will be furnished one authenticated copy of the contract and four executed copies of DD Form 1131, together with funds collected. The finance officer will retain the contract, funds, and one copy of DD Form 1131, and will receipt and return to the responsible DE three copies of DD Form 1131.

(2) Civil Works Property. The finance officer will be furnished four executed copies of DD Form 1131, together with funds collected, an authenticated copy of each contract, Standard Form 1036 or a statement justifying negotiation, copy of advertisement, If any, and or original signed bond, if any. Three copies of DD Form 1131 (Cash Collection Voucher) will be receipted and returned to the DE.

11-244. Insurance Against Loss or Damages to Buildings and Improvements by Fire or Acts of God. The Department does not carry property insurance of any nature. Vendees, however, may be advised as to their liability for certain losses and that insurance protection against such risks is optional. Under the FPMR, the vendee must provide insurance to protect the United States when credit is extended (Section 101-47.304-4(f)).

11-245. RESERVED.

11-246. RESERVED. *

11-247. RESERVED.

SECTION XV
INSPECTIONS TO INSURE COMPLIANCE WITH DISPOSAL CONDITIONS

*

11-248. Properties Requiring Compliance Inspections. The principal properties conveyed which require inspections are for the training of civilian components of the Armed Forces. However, other properties are sometimes conveyed under special acts of Congress subject to conditions required by the authorizing act. These properties will also be inspected for compliance with such conditions.

11-249. Civilian Component Training Facilities.

a. Authority. Under the provisions of the Surplus Property Act of 1944, as amended, a number of surplus real properties of the United States certified by the Governor of the state in which located and by the Secretary of the Army, Navy or Air Force as the case was, as being suitable and needed for use in training and maintaining civilian components of the Armed Forces under their respective jurisdictions, were conveyed by the Administrator of the War Assets Administration or by the General Services Administration to states, their political subdivisions or tax-supported instrumentalities for such purposes. These conveyances contained a nunber of covenants, conditions, restrictions and reservations, designed to insure the use and maintenance of the property and appurtenances for the purpose for which conveyed and otherwise to protect the interests of the United States. The Secretary of Defense is authorized by 40 U.S.C. (484(k) (4) (d) to:

(1) Determine and enforce conpliance with the terms, conditions, reservations and restrictions contained in any instrument by which such transfer was made;

(2) Reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(3) Grant releases from any of the terms, conditions, reservations and restrictions contained in, and convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was transferred: Provided, that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interest of the United States. *

*

b. Authority Delegated. The authority vested in the Secretary of Defense under the Act cited in a above has been redelegate to the Secretary of the Army and the Secretary of the Force, respectively (Department of Defense Directive 5100.10, dated 16 March 1972).

11-250. Inspections of Civilian Component Training Facilities and Other Properties Conveyed Subject to Conditions. The DE, within whose areas of military real estate operations are located the facilities conveyed under paraqraph 11-249, supra, will make physical inspections thereof for the purpose of determining compliance with the terms of the conveyance. Any evidence of noncompliance should be reported to DAEN-REM in order that approprite recomendations may be made to the respective Secretary for corrective action. A detailed statement of the facts and recomendations of the DE should be included in the report. Inspections should be scheduled and integratd with outlease compliance inspection itineraries in the interest of economy. This requirement for inspections extends to properties conveyed by the Secretary of the Army or Air Force under special legislation, where the deed of conveyance imposes conditions on future use of the land. These inspections need not be made annually but frequently enough so that the DE is assured that the conditions are being observed, and at least every three years. Compliance with conditions in deeds for property conveyed for airport purposes under 49 U.S.C. 1723 and 50 App. U.S.C. 1622g is the responsibility of the Secretary of Transportation; for property conveyed for purposes of health and education, the Secretary of Health, Education, and Welfare or its successor agencies (40 U.S.C. 484(k) (4). The Commander, U.S. Army Materiel Development and Readiness Command, is responsible for compliance with the National Security Clause, and similar conditions, in deeds conveying industrial properties.

11-251. Inspections of Civil Works Properties. Disposal of real estate interests which impose restrictions on the use of the land, or reserve an estate in the land, will be inspected for compliance on an annual or other reasonable basis to assure compliance.

11-252. RESERVED.

11-253. RESERVED. *

11-254. RESERVED.

(Next page is 11-199)

TABLE 11-1. REGULATORY REFERENCES

SECTION I

63 Stat. 377 (40 U.S.C. 471)
16 U.S.C. 460L-5(a)
16 U.S.C. 470
16 U,S.C. 1451
33 U.S.C. 558
42 U.S.C. 1594a-1
42 U.S.C. 4321
Executive Order 11593
Executive Order 11988
Executive Order 11990
Federal Property Management Regulations, Section 101-47
AR 200-1
AR 405-5
AR 405-90
ER 1105-2-460
ER 1165-2-26
* ER 405-1-12, Chapter 8 *

SECTION II

AR 405-90
AFR 87-4

SECTION III

10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980
Executive Order 11954
Federal Property Management Regulations, Section 101.47
AR 405-90
AFR 87-4

SECTION IV

10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980
DOD Instruction 4165.12

SECTION V

43 CFR 2374.1
10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980
42 U.S.C. 1594a-1 (b)
50 U.S.C. 451
Executive Order 11296
Federal Property Management Regulations, Section 101.47

SECTION V cont.

ER 755-2-1
ER 1105-2-40

SECTION VI

63 Stat. 377 (40 U.S.C. 471)
5 U.S.C. 3108
40 U.S.C. 303b
26 Comp. Gen. 303
Federal Property Management Regulations, Section 101,47
AR 405-80
AR 405-90
AFR 87-4

SECTION VII

43 CFR 2370-22374

SECTION VIII

10 U.S.C. 2662 as amended by P.L. 96-418 dated 10 October 1980
Executive Order 11954
AR 380-5
AR 405-90
AFR 87-4
* ER 405-1-12, Chapters 8 and 14 *

SECTION IX

63 Stat. 377 (40 U.S.C. 471)
68 Stat. 1119 (P.L. 83-765)
70 Stat. 1018 (P.L. 84-968)
76 Stat. 1129 (P).L. 87-852)
33 CFR 211.141 - 211-147
41 CFR 101-47
9 CFR 21
10 U.S.O. 831f(b)
10 U.S.C. 2571(a)
10 U.S.C. 2662 as amended by P.L. 96-418 dated 10 October 1980
10 U.S.C. 2672
16 U.S.C. 460e
16 U.S.C. 505a and b
16 U.S.C. 667b-d
18 U.S.C. 4122
23 U.S.C. 107(d)
23 U.S.C. 317
33 U.S.C. 558b and b.1
33 U.S.C. 578

SECTION IX Cont.

38 U.S.C. 5003
40 U.S.C. 122
40 U.S.C. 345c
40 U.S.C. 484
40 U.S.C. 484(e)
40 U.S.C. 484(k)
40 U.S.C. 511 nd 512
49 U.S.C. 1157
49 U.S.C. 1349(a)
49 U.S.C. 1723
50 U.S.C. 1622(g)
Surplus Property Act of 1944
Executive Order 10530
Executive Order 12079
36 FR 20423
Federal Property Management Regulations, Section 101.47
DOD Directive 4165.6
AR 405-5
AR 405-90
AFR 87-4
ER 1130-2-400
ER 1180-1-1
* ER 405-1-12, Chapters 4 and 5 *

SECTION X

40 U.S.C. 278a and b
Federal Property Management Regulations, Section 101.47
AR 405-90

SECTION XI

33 U.S.C. 558
Federal Property Management Regulations, Section 101.47
AR 405-90
AR 420-70
AFR 87-4
ER 735-1-1

SECTION XII

13 U.S.C. 121.3
15 U.S.C. 637(b)(7)
15 U.S.C. 644
30 U.S.C. 601
33 U.S.C. 558
Federal Property Management Regulations, Section 101.45 and 101.47
AR 405-90
AR 420-74
ER 1130-2-400

*SECTION XIII.

10 U.S.C. 2662 as amended by P.L. 96-148 dated 10 October 1980
AR 385-40
AR 405-90
TB 700-4

SECTION XIV.

10 U.S.C. 4682
40 U.S.C. 484(c)
Executive Order 11246
Executive Order 11375
Federal property Management Regulations, section 101-47
Defense Acquisition Regulations (formerly the Armed Services Procurement Regulations)
ER 1180-1-1

SECTION XV.

40 U.S.C. 484(k)
49 U.S.C. 1723
50 U.S.C. 1622g
Surplus Property Act of 1944
DOD Directive 5100.10

*

* 01 02 RR RR EEE

HQDA {2DAEN -REM-C} WASH DC/DISTRICT ENGINEER

DLA CAMERON STA VA

CCNGB WASHDC //NGB-ARI-R//

CDRARCOM ALEX VA //DRCIS-ER//

CDRFORSCO FT MCPHERSON GA

CDRTRADOC FT MONROE VA

CDRUSA {AREA ARMY}

DAF WASHDC //AF LEER//

CDR AAFES DALLAS TX

CDRNAVFACENGCOM CODE 204 ALEX VA

CDR AREA NAVAL DISTRICT

AREA NAVFACENGCOM

COMDT US COAST GUARD WASHDC

CDR AREA COAST GUARD DISTRICT

AREA DIVENGR/DISTENGR

DA FOR COFENGRS ATTN, DAEN-ZCI; TSG, DAAR-LOI, DAMO, DCSRDA

UNCLAS E F T O FOUO

SUBJ: SCREENING EXCESS REAL PROPERTY FOR DISPOSAL

{EO 11724 IF APPROPRIATE}.

A. STURTEVANT REALTY OFFICER
DAEN-REM-C X20504

W. LOCKWOOD REM X20511

*

Figure 11-1a

*02 02 RR RR EEEE

1. DA IS CONSIDERING ACTION TO DECLARE AS EXCESS THE FOLLOWING PROPERTY: {BRIEFLY DESCRIBE THE PROPERTY AND IMPROVEMENTS, GIVE ITS LOCATION, INDICATE ITS PAST USE, THE INTEREST OF THE UNITED STATES IN THE LAND; STATE WHETHER OR NOT THE PROPERTY HAS AS ESTIMATED VALUE OF $100000 OR MORE, AND OTHER PERTINENT INFORMATION.}

2. ADDRESSEES HAVING REQUIREMENTS FOR ANY PORTION OF THE ABOVE WILL SUBMIT REQUESTS TO REACH {ORIGINATING OFFICE} PRIOR TO 30 DAYS FROM THE DATE OF THIS MESSAGE. {IF E01194 EXCESS REPORT, REQUESTS ARE TO BE SUBMITTED TO REACH ASD {MRA&L} WITHIN 15 DAYS FROM THE DATE OF MESSAGE.} NEGATIVE REPORTS ARE NOT, REPEAT, NOT REQUIRED. A N Y ARMY REQUIREMENTS DISCLOSED BY THIS SCREENING WILL BE AFFORDED PRIORITY.

3. ARMY ADDRESSEES HAVING REQUIREMENTS SHOULD SUBMIT REQUESTS WHICH, CONCLUSIVELY INDICATE THAT PROPOSED UTILIZATIONS ARE ESSENTIAL TO ACCOMPLISHMENT OF ASSIGNED MISSION, THAT OTHER AVAILABLE DA PROPERTIES CANNOT BE USED, AND CONTAIN SUPPORTING DATA REQUIRED BY AR 405-90, PARA 10.

4. THE FOUO MARKING IS CANCELLED UPON OCCURRENCE OF THE EVENT SPECIFIED IN PARA 2 OF THIS MESSAGE. *

A. STURTEVANT REALTY OFFICER
DAEN-REM-C X20504

W. LOCKWOOD, REM X20511

Figure 11-1b

*

DEPARTMENT OF THE ARMY
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS
REAL ESTATE
DISPOSAL REPORT NO. ___

Submitted pursuant to Title 10, United States Code, Section 2662

Name of Installation:	Fort Brown, Greenfield, Connecticut	
Using Service (Command):	United States Army Forces Command	
Former Use:	Training Camp	
Interest:	Fee	
Area:	3,000 Acres	
Original Cost:	Land:	$ 250,000
	Improvements:	5,000,000
	Total	$5,250,000
Acquisition Date:	1942	
Proposed Action:	Report to General Services Administration as excess real property	
Authority:	Federal Property and Administrative Services Act of 1949 (63 Stat. 377)	

Par. 1. "The Department of the Army proposes . . . . " (Here make a brief statement of the proposed action being reported to the Congress.)

Par. 2. Set out concise historical background of installation involved, which may include: Date and purpose of establishment; summary history of real estate data including original land acquisition and cost, with fee, easement and other types of ownership to be listed separately, and similar information for additional acquisitions, disposals, and for the current holdings, showing total acreage and cost of fee, easement, and other types of real estate holdings and costs thereof.

Brief chronological summary of installation, indicating active and inactive periods, current mission and present uses for other than assigned mission including other Army, Navy and Air Force, non-military Government, and civilian use. *

ENG Form 2187-R

Figure 11-2

*

DEED WITHOUT WARRANTY

THIS DEED, made this _____, 19____ by and between the United States of America, Grantor, acting by and through the Secretary of the Army, under and pursuant to the powers and authority contained in Section 23 of the Airport and Airways Development Act of 1970 (84 Stat. 232; 49 U.S.C. 1723) and in conformity with Part 154 of Title 14 and Section 0.67 of Title 28 of the Code of Federal Regulations and Executive Order No.12079, 43 Fed. Reg. 42233 (1978) and in accordance with the request of the Administrator of the Federal Aviation Administration (herein called the "Administrator"), and the City of _____, organized and existing as a City of the _____ Class under the laws of the State of _____ with principal office and place of business in the City of _____, State of _____, Grantee.

WHEREAS, it has been determined that the conveyance requested by the City of _____ is not inconsistent with the needs of the Department of the Army.

WITNESSETH: That the Grantor, in consideration of the benefits which shall accrue to the public by virtue of the use of the property hereinafter described for public airport purposes, does hereby bargain, sell grant and convey without warranty, express or implied subject to the conditions, covenants and reservations hereinafter set forth, unto the Grantee all of its right, title and interest in and all those certain parcels of land designated as a portion of Fort _____ Military Reservation, situated in the County of _____, State of _____, to wit:

A tract of land in the _____ of Section _____, Township _____, Range of the _____ Meridan in _____ County _____, described as follows:

Beginning at_____(Complete legal description of tract)_____.
The tract of land hereby conveyed contains _____acres, more or less. *

Figure 11-3a

This Grant is subject to the following covenants and conditions which the Grantee, by acceptance of this deed, assumes for itself and its successors and assigns, as covenants running with the land:

1. That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport, in accordance with the National Airport System Plan, the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

2. That the airport, and its appurtenant areas and its buildings and facilities, whether or not on the land conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

3. That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

4. That in the operation of the airport and its appurtenant areas, the grantee:

a. agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, or national origin;

b. agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21) - nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

5. That the furtherance of the policy of the FAA under this covenant, the grantee:

a. agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft *

Figure 11-3b

* rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity; and

b. agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

c. agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

6. That any later transfer of the property interest conveyed will be subject to the covenants and conditions in this instrument of conveyance.

7. That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

8. That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph 7 of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

9. That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, or his successor in function, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates. *

Figure 11-3c

* TO HAVE AND TO HOLD the said premises, with the appurtenances, unto the said Grantee and its successors and assigns, forever, subject to the covenants and conditions herein set forth.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed and the official seal of the Department of the Army to be hereunto affixed.

UNITED STATES OF AMERICA

(SEAL) _____
SECRETARY OF THE ARMY

APPROVED this _____ day of _____, 19_____.

The approval by the Assistant Attorney General, Land and Natural Resources Division, is made pursuant to authority delegated by the Attorney General by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 9, 1971: 36 F.R. 20428).

_____
ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION
DEPARTMENT OF JUSTICE *

Figure 11-3d

*

ACKNOWLEDGMENT

COMMONWEALTH OF V1RG1NIA)
: ss
COUNTY OF ARLINGTON)

BEFORE ME, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, personally appeared, _____, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the said instrument in the capacity therein stated for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this_____ day of _____, 19 .

_____
NOTARY PUBLIC

(SEAL)
My Commission Expires:

Figure 11-3e

TO PUBLIC BODIES IN THE _____

Notice of the Availability of Land for Development
of Public Port or Industrial Facilities

Pursuant to provisions contained in Section 108 of Public Law 86-645, 86th Congress, _____(General Description of Property)_____ is available for sale to the State of _____, political subdivisions thereof, port districts, port authorities, or other bodies created by the State for the purpose of developing or encouraging the development of public port or industrial facilities. The parcel of land is about _____(location)_____. Any sale of this property shall be at the fair market value of the land, as determined by the Secretary of the Army, upon condition that the property shall be used for public port or industrial purposes and subject to such conditions, reservations or restrictions as the Secretary may determine to be necessary for the development, maintenance, or operation of the _____(Project)_____ or otherwise in the public interest.

A legal description of this land will be mailed upon request.

Applications for purchase of this property must be filed in writing with me by _____. Applications must state fully the purposes for which the land is desired and the scope of the proposed development. *

Figure 11-4

SAMPLE QUITCLAIM DEED

FOR PUBLIC PORT OR INDUSTRIAL FACILITIES

THIS INDENTURE, made by and between the United States of America, acting by and through the Secretary of the Army, under and pursuant to the powers and authority contained in Section 108 of the Act of Congress approved July 14, 1960 (Public Law 86-645; 74 Stat. 486), party of the first part, and the , party of the second part.

WHEREAS, pursuant to said Act and to the Delegations, Rules and Regulations of the Secretary of the Army, as published in the Federal Register of March 11, 1961 (Volume 26, No. 47, pages 2117-2118), it has been determined (1) that the development of public port and industrial facilities on the hereinafter described land within the Project, a water resource development project under the jurisdiction of the Department of the Army, will be in the public interest; (2) that such development will not interfere with the operation and maintenance of the ; and (3) that disposition of such land for this purpose will serve the objectives of the Project.

NOW, THEREFORE, in consideration of the sum of _____ ($), and subject to the exceptions, reservation, restrictions, covenants and conditions hereinafter set forth, the party of the first part hereby conveys and quitclaims unto the party of the second part, its successors and assigns: *

Figure 11-5a

* FOR PUBLIC PORT PURPOSES ONLY, all right, title and interest of the United States of America in and to the real estate described as follows:

TRACT A

and,

FOR INDUSTRIAL PURPOSES ONLY, all right, title and interest of the United States of America in and to the real estate described as follows:

TRACT B

SUBJECT TO the following exceptions and rights outstanding in third parties: Existing easements for public roads and highways, public utilities, railroads and pipelines.

EXCEPTING, SAVING AND RESERVING unto the United States of America and its assigns, from this conveyance the following rights, power, privileges and easements, namely:

(Set forth exceptions and reservations deemed necessary for purpose of the project.)

The said party of the second part does by the acceptance of this deed, covenant and agree for itself, and its successors and assigns, forever, as follows:

(Set forth conditions of conveyance)

1.

2.

3.

4. *

Figure 11-5b

*

5. The Grantee agrees to construct public port facilities only on the area described as Tract A and to construct industrial facilities only on the area described as Tract B.

PROVIDED, HOWEVER, that if any portion of the above described tracts is used for any purpose other than the purpose designated in Condition 5 above then all right, title and interest in and to the portion of the tract so used shall revert to and become the property of the United States at its option and it shall have the immediate right of entry upon said premises, subject to the conditions hereafter set forth.

In the event of a breach of the above condition pertaining to public port and industrial use, the Grantor shall, before claiming any forfeiture, give notice in writing of said breach, and of its intention to exercise said option, to the then occupant of the premises. Said occupant shall have a period of sixty (60) days after receipt of said notice to correct and cure said breach. The right of entry of the Grantor shall arise and become exercisable only after the termination of said sixty (60) day period and failure of the then occupant to correct or cure said breach.

In the event of the failure or refusal of the then occupant of said premises to correct or cure said breach within the time limited, and after exercise by the Grantor of its right of entry, said occupant shall have a reasonable time, not to exceed 120 days, to remove any improvements that have theretofore been placed upon said premises. Such right of removal shall under no circumstances permit such occupant to cause damage to the land involved. In the event that said occupant fails to *

Figure 11-5c

* remove said improvements within the time limited, they shall become the property of the United States.

Failure of the United States to exercise its right of entry upon breach of the above condition pertaining to public port and industrial use shall not be construed as a waiver or relinquishment of said right.

TO HAVE AND TO HOLD the above-described premises unto the said its successors and assigns, forever, subject to the exceptions, reservations, restrictions covenants, and conditions herein contained. *

Figure 11–5d

* IN WITNESS WHEREOF, the United States of America has caused these presents to be executed in its name by _____, Secretary of the Army, and the seal of the Department of the Army to be hereunto affixed this _____ day of _____ 19___.

UNITED STATES OF AMERICA

BY _____
Secretary of the Army

The Foregoing Instrument is also executed and accepted for and in behalf of the Party of the Second Part by _____

_____

its Commissioners, and attested by its Secretary, and its seal hereunto affixed this _____ day of _____, 19___. *

Figure 11-5e

FORMAT FOR NOTICE OF AVAILABILITY

GOVERNMENT AIRPORT PROPERTY

FOR DISPOSAL

(BRIEF DESCRIPTION - LOCATION)

Terms and conditions of disposal, and all necessary information about this property, will be furnished upon request at the office of the District Engineer, U.S. Army Engineer District, _____, _____.

Acquisition of this property is subject to the following priorities: (1) Federal Government agencies; (2) State and local governments, and tax-supported institutions. Your priority expires _____ days after date of this notice, if no advice is received of your interest in acquiring the property.

To receive consideration, proposals from priority holders must be submitted on special forms obtainable at the _____ District Engineer's Office, and must arrive at that office within _____ days after date of this notice, or not later than (a reasonable time so determined by the District Engineer)_____.

States, political subdivisions, municipalities and tax-supported institutions may, on a priority basis immediately following that of Federal Government agencies, acquire this property under the terms and conditions of Title 50, Appendix, United States Code, Section 1622(g) as amended. *

Figure 11-6

*

APPLICATION FOR AIRPORT PROPERTY
BY STATE, POLITICAL SUBDIVISION, MUNICIPALITY, OR TAX-SUPPORTED INSTITUTION

APPLICATION is hereby made to the District Engineer, _____,

by _____

(hereinafter referred to as Applicant) for the transfer to it, upon the terms and conditions hereinafter set forth, of surplus property constituting all or part of the installation generally known as_____ Air Force Base located near _____, State of _____, including certain personal property, all as more particularly described in Schedule "A" attached hereto and made a part hereof. All real or personal property described in Schedule "A" is hereinafter referred to as the "airport."

TERMS AND CONDITIONS

1. This application and its acceptance by the District Engineer, _____ _____, hereinafter referred to as the Government shall constitute the entire agreement between the applicant and the Government unless modified in writing signed by both parties.

2. Applicant warrants that no person or agency has been employed or retained to solicit or secure acceptance of this application upon an agreement or understanding for a commission, percentage, brokerage, or other contingent fee, except bona fide employees or bona fide commercial agencies maintained by the applicant for the purpose of doing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability, or in its discretion to require applicant to pay to it the full amount of such commission, percentage, brokerage, or contingent fee.

3. The failure of applicant to inspect fully the property described in Schedule "A" or to be fully informed as to the condition thereof will not constitute grounds for any noncompliance with the terms of this application if accepted by the Government. *

Figure 11-7a

* 4. The property offered for disposal will be transferred “as is” and “where is” without warranty or guaranty, express or implied, of any kind or nature.

5. Transfer of property shall be accomplished by an instrument of transfer in form satisfactory to the Government without warranty, express or implied, and shall contain covenants running with the land for the observance by the transferee of the following reservations, restrictions, and conditions; except that the provisions of a(1) and (2) shall be included in the instrument of transfer as conditions subsequent rather than covenants:

a. Use by the Transferee.

(1) That, except as provided in subsection (4) hereof, the above-described property, hereinafter called “the airport,” shall be used for the use and benefit of the public as a public airport on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of subsection 13 (g) (2) (C) of the Surplus Property Act of 1944, as amended.

(2) That, except as provided in subsection (4) hereof, the entire landing area, and all structures, improvements, facilities and equipment in which any interest is transferred shall be maintained for the use and benefit of the public at all times in good and serviceable condition to assure its efficient operation, provided, however, that such maintenance shall be required as to improvements, facilities, and equipment only during the remainder of their estimated life as determined by the Administrator of the Federal Aviation Agency or his successor. In the event materials are required to rehabilitate or repair certain of the aforementioned improvements, facilities, or equipment, they may be procured by demolition of other improvements facilities, or equipment conveyed as a result of this application and located on the above-described premises, which, in the opinion of the Administrator of the Federal Aviation Agency or his successor, have outlived their use as airport property.

(3) That insofar as is within its power, the transferee shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting, or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(4) That none of the property described in Schedule “A” shall be used, leased, sold, salvaged, *or* disposed of by the grantee or transferee for other than airport purposes without the written consent of the Administrator of the Federal Aviation Agency, which consent shall*

Figure 11-7b

* be granted only if the Administrator of the Federal Aviation Agency determines that the property can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which such property is located.

b. Use by the Government.

(1) That the United States of America through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any property applied for herein is located or used, without charge; provided, however, that such use may be limited as may be determined at any time by the Administrator of the Federal Aviation Agency to be necessary to prevent undue interference with use by other authorized aircraft; provided, further that the United States shall be obligated to pay for damages caused by such use, or, if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area commensurate with the use made by it.

(2) That during any national emergency declared by the President of the United States of America or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which the surplus property applied for herein is located or used, as it then exists, or of such portion thereof as it may desire; provided, however, that the United States shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; provided, further, that the United States shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively, of any improvements to the airport made without United States aid and never owned by the United States.

c. Miscellaneous.

(1) That no exclusive right, as defined in subsection (g)(2)(C) of section 13 of the Surplus Property Act of 1944, as amended, for the use of the airport at which the property applied for herein is located or used shall be vested (either directly or indirectly) in any person or persons to the exclusion of others in the same class. *

Figure 11-7c

* (2) That the applicant shall grant or obtain for the benefit of the United States a release from any and all liability it may be under for restoration or other damages under any lease or other agreement covering the use by the United States of any airport, or part thereof, owned, controlled, or operated by the applicant, upon which, adjacent to which, or in connection with which the surplus property applied for herein was located or used; provided, that no such release shall be construed as depriving the applicant of any right it may otherwise have to receive reimbursement under section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal Agency.

d. Reservations and Restrictions.

(1) That, in the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property is disposed of are not met, observed, or complied with, whether due to legal inability or otherwise, the title, right of possession, and all other rights transferred shall at the option of the United States revert in then existing condition to the United States upon demand made in writing by the Administrator of the Federal Aviation Agency, or his successor, at least sixty (60) days prior to the date fixed for the revesting of such title, right of possession, and other rights transferred, provided the breach shall not have been remedied within such sixty (60) day period.

(2) That any of the property described in Schedule “A” maybe successively transferred only with approval of the Administrator of the Federal Aviation Agency, or his successor, to the extent required by the provisions of Subsection (a)(4) of Section 5 hereof, with proviso that any such transferee assumes all the obligations imposed herein.

(3) If the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the United States may exercise its option to cause the title, interest, right of possession, and other rights transferred, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

e. Transferee’s Obligations. The transferee shall take title subject to such rights, if any, as third persons may have in the above-described premises at the date of disposal of said premises by virtue *

Figure 11-7d

* of any grant from the United States or others and shall assume all duties, obligations, and liabilities of the United States or any agency thereof thereunder and hold the same harmless from all claims arising therefrom.

f. Mineral Rights. Subsurface rights to minerals or other interests included in the real property transferred for airport purposes may not be exploited in such a way as will interfere with the efficient operation of the airport.

g. United States Rights. The reservation in the United States of the right, title, and interest in and to all property of whatsoever nature not specifically transferred, together with right of removal thereof from the premises within a reasonable time, which shall not be construed to mean any period less than one (1) year after the date of the instrument of transfer. During such period, the United States, its agents, customers, transferees, successors in interest, and assigns shall have a right of ingress to and egress from the premises for the purpose of using, disposing of by sale or otherwise, and removing such property.

h. Application of Subparagraphs, a, b, and c. The condition that, if permitted by law, the provisions of subparagraphs a, b, and c, above shall apply with equal force and effect to the airport in its present location, in instances where the airport itself is not included in the disposal.

i. Payment in Cash of Taxes, Assessments, etc. The transferee shall make payment in cash to the Government of an amount of money equivalent to the pro rata amount, as of the date of acceptance of the bid of the transferee, of all taxes, assessments, and similar charges made against the property conveyed, in instances where the particular Government agency holding the property is liable for the payment of such taxes, assessments, or charges.

j. Waiver of Any Existing Option. The transferee must obtain for the benefit of the Government, in form satisfactory to it, a waiver of any existing option granted to purchase the airport or any portion thereof.

6. From the time the Government gives notice of acceptance of the application, the applicant shall bear all risks and shall bear any and all losses sustained by reason of damage or injuries that may be suffered by the airport property, and notwithstanding such losses, damage, or injuries, each and all of the provisions of the agreement formed by acceptance of this application shall remain unimpaired and in full force and effect. *

Figure 11-7e

* 7. Upon receipt of Notice of Acceptance of the application by the Government, the successful applicant may, at its option, and upon notification to the Government and approval of the holding Government angency, immediately enter into possession of the airport property and use, operate, and maintain the same subject to, and in accordance with, all of the terms and conditions hereinabove set out and in addition, for the period prior to delivery of the instrument or instruments of transfer conveying legal title, subject to, and in accordance with, following provisions and conditions:

a. Transferee Shall Comply with all Pertinent Rules, Etc. The operation of the airport property shall be subject to such regulations as may be prescribed by the Administrator of the Federal Aviation Agency from time to time, and the transferee shall comply with all pertinent laws, ordinances, rules, orders, or other applicable regulations and shall hold the United States harmless from any liability or penalty which may be imposed by reason of any asserted violation thereof by the transferee.

b. Limitations on Major Structural Changes. The transferee shall not make, permit, or suffer any additions, improvements, or alterations to the airport property which constitute any major structural change or changes unless such change or changes (1) are made in carrying out a project under the Federal Airport Act of 1946, as amended (49 U.S.C. 1101); or (2) are made with the prior written consent of the Administrator of the Federal Aviation Agency. Change or changes made with the prior written consent of said Administrator and not under the Federal-Aid Airport Program shall be solely at the expense of the transferee, and unless such consent provides specifically that title to the addition or improvements so made shall vest in the transferee, title thereto shall at all the transferee, title thereto shall at all times remain in the United States and such additions or improvements shall be subject to all terms and conditions of this instrument. The transferee agrees to hold the United States harmless from mechanics' and materialmen's liens arising from any additons, improvements, or alterations effected by the transferee.

c. Right of Inspection. The District Engineer and the Federal Aviation Agency, or the designated representatives of either of them, shall have the right to inspect the airport at all times.

d. Claim for Damages. The transferee agrees to maintain, indemnify, and save harmless the United States against and from any and all claims for damages which may arise from or in connection with the privileges herein granted, excepting claims for injuries or death to persons resulting from willful or negligent acts or omissions of the United States or any of its officers, employees, agents, or agencies. *

Figure 11-7f

* e. Payment of Charges Due. The transferee shall assume responsibility for the payment of all taxes and assessments and public utility charges becoming due on the property from the date of its entering into possession of the airport property.

f. Violation or Neglect of Contract. That if the transferee violates or neglects to perform any of the terms or conditions of the agreement formed by the acceptance of its application, it will, if required by the Administration, vacate said premises, remove all property of the transferee therefrom and restore the land, improvements, facilities, and equipment included herein to as good condition on such date of expiration or relinquishment *as* when received, ordinary wear and tear excepted. If the transferee shall fail or neglect to remove said property and to restore the land, improvements, facilities, and equipment included herein, then, at the option of the Government, said property shall either become the property of the United States without compensation therefor, or the Government may cause the property to be removed and the land, improvements, facilities, and equipment included herein to be so restored at the expense of the transferee and no claim for damage against the United States or its officers or agents shall be created by or made on account of such removal and restoration.

g. When Government Property is Unaccounted For. If, upon removal of the transferee from the premises prior to its acceptance of delivery of the instrument or instruments of transfer conveying title to the airport, any property (other than usable supplies and maintenance materials) of the United States is unaccounted for, the transferee shall make replacement to the satisfaction of the Administrator of the Federal Aviation Agency, or in lieu of such replacement, the transferee shall, if so required by the Administrator of the Federal Aviation Agency, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States or any of its agencies.

8. The successful applicant agrees to perform all acts necessary or desirable to enable it to enter into possession of the property within _____ days after acceptance of its application by the Administration and agrees to enter into possession not later than that date, under the same provisions and conditions of possession as set out in paragraph 7 above. Time shall be of the essence in the agreement formed by such acceptance.

9. The District Engineer assign or transfer its right, title, and interest in the agreement formed by its acceptance of the application to any other branch or agency of the United States, and upon such assignment or transfer, such branch or agency shall succeed to all the rights, powers, privileges, immunities, duties, and obligations of the District Engineer hereunder, and the District Engineer shall cease to have any duties or obligations hereunder. *

Figure 11-7g

* 10. Neither the agreement formed by acceptance of this application nor any interest therein shall be assigned or transferred by the applicant to any other party.

11. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of the agreement formed by the acceptance of this Application or to any benefit that may arise therefrom, but this provision shall not be construed to extend to such agreement if made with a corporation for its general benefit.

Dated this _____ day of _____, 19 _____.

_____
(Name)

_____
(Title)

_____
(Address of Applicant)

ACCEPTANCE BY THE GOVERNMENT

Accepted by and on behalf of the United States of America this

_____ day of _____, 19 _____.

By _____ *

Figure 11-7h

*

SCHEDULE "A"

As the result of a field survey and recommendations made by the Administrator of the Federal Aviation Agency, the property hereinafter described has been classified as available for disposal as airport property under the Federal Property and Administrative Services Act, as amended, and the Surplus Property Act of 1944, as amended. (The descriptions are believed to be correct, but any error or omission shall not constitute any ground or reason for any claim by applicant against the General Services Administration or the Federal Government.)

a. Land. All that certain parcel of land located in the City of _____, County of _____, State of _____. more particularly described as:

b. Buildings and Improvements.

c. Necessary Operating Equipment.

Figure 11-7i

INSTRUCTIONS TO APPLICANTS FOR AIRPORT PROPERTY

1. Standard Application Form. Applications must be submitted on the inclosed standard Application Form. Additional copies and any additional information desired may be obtained at the office of the District Engineer located at _____.

2. Rights Reserved. The right is reserved to waive any defect or informality in the applications received and to accept or reject any application. In the case of receipt of two or more applications of equal priority and merit, choice of the transferee will ordinarily be based on need for the property as airport property.

3. Property Offered in its Entirety. The property described in the application is offered for disposal in its entirety and is not severable, and bids for separate portions thereof will not be considered; provided, however, that the applicant may delete from Schedule "A" such buildings, improvements, and equipment as it does not desire to acquire hereunder.

4. If Applicant is Political Entity. If the applicant is a political entity, there shall be attached to the application copies, in duplicate, of so much of the records of its governing body as will show the official character and authority of the officer signing the application; authorize him to accept delivery of all formal instruments of transfer and agree that the transferee shall be bound by all the terms, reservations restrictions, and conditions of transfer set forth in the application. Such copies shall be duly certified to be true copies by the secretary or other official with powers of certification, and the official seal of the applicant shall be affixed to such certification.

5. Applicant Must Furnish Legal Authority. The applicant shall furnish with its application, and as a condition precedent to the delivery of the aforesaid instruments of transfer, evidence satisfactory to the Administration of its legal authority to accept transfer of the property applied for herein and to covenant to operate and maintain the same in the manner required hereby.

6. Airport Subject to Inspection. The airport is now subject to inspection by prospective transferees. Office of the District Engineer _____ will, upon request, make arrangements for such inspection.

7. Administration's Notice of Acceptance. Notice by the Government of acceptance or rejection of the application, if not personally made to a *

Figure 11-7j

* duly authorized representative of the applicant, shall be deemed to have been sufficiently given when mailed in a postpaid or franked envelope to the applicant at the address indicated in the application. *

Figure 11-7k

QUITCLAIM DEED AND TRANSFER AGREEMENT

(AIRPORT PROPERTY)

THIS QUITCLAIM DEED AND TRANSFER AGREEMENT, made and entered into by and between the UNITED STATES OF AMERICA, acting by and through the Secretary of the Army (Air Force), under and pursuant to the powers and authorities contained in the Surplus Property Act of 1944, 58 Stat. 765, as amended, 50 U.S.C. APP. 1622(g) (1948 ed.), and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended 40 U.S.C. Chapter 10, (1958 ed.), and the delegation of authority to the Secretary of Defense from the Administrator of the General Services Administration (41 CFR Sections 101-47.302-2 and 101-47.308-2), and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 Fed. Reg. 7113), Party of the First Part, and the (City of _____, _____, a body cooperate and politic under the laws of the State of _____, its successors and assigns, Party of the Second Part:

W I T N E S S E T H :

That the said Party of the First Part, for and in consideration of the assumption by the Party of the Second Part of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenant to abide by and agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, conveys and *

Figure 11-8a

* quitclaims to the said Party of the Second Part, its successors and assigns, under and subject to the reservations, restrictions, conditions, and exceptions hereinafter set out, all its right, title, and interest in the following described property in the County of_____, State of _____ to wit:

DESCRIPTION

* * * * * *

being (a part of) the same property acquired by the United States of America under _____ of record in Book _____.

and WHEREAS, by Lease No. DA_____etc.:

DESCRIPTION

* * * * * *

(Describe leased area)

Together with all existing easements appurtenant to the land covered by said lease, including, but not limited to, the avigation easements for runway approach zones, power easements, water line easements, and sewer line easements;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained, it is agreed by and between the Party of the First Part and the Party of the Second Part that the aforementioned lease and any and all modifications now in effect which would otherwise continue *

Figure 11-8b

* in full force and effect, subject to the provisions thereof, including the leasehold interest of Party Of the First Part in buildings, facilities and improvements owned by Party of the Second Part, are hereby surrendered to the Party of the Second Part, subject to the terms and conditions hereof, and the said Party of the First Part, for and in consideration of the assumption by Party of the Second Part of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenants to abide by the agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, does hereby bargain, sell, assign and transfer, but without warranty, express or implied, unto the said Party of the Second Part, its successors and assigns, under and subject to the reservations, restrictions, conditions, exceptions and rights hereinafter set out, all its right, title, and interest in the following described property, including all equipment and fixtures appurtenant thereto, situated in the County of _____, State of_____, and located on the leased land descrided above, to wit:

BUILDING NUMBER	DESCRIPTION
*	*

Together with the interest of Party of the First Part in utility systems, fueling facilities, lighting facilities, taxiways and runways located on the leased land, and also together with the following equipment

QUANTITY	DESCRIPTION
*	*

Figure 11-8c

* EXCEPTING, HOWEVER, from this conveyance all right, title and interest in and to all its property in the nature of equipment, furnishings and other personal property located on the above described premises which can be removed from the land without material injury to the land or structures located thereon, other than property of such nature located on the premises hereby conveyed or surrendered from lease which is reasonably necessary for the operation or maintenance of the airport or for the operation or maintenance of the structures and improvements specifically listed hereinabove as being transferred hereby, for any reasonable use for which such structures or improvements are readily adaptable; and further excepting from this conveyance all its structures on said premises other than structures specifically described or enumerated above as being conveyed hereunder, including _____.

* * * * * *

And reserving to the Party of the First Part for itself and its lessees, licensees, permittees, agents and assigns the right to use the property and structures excepted hereby in such a manner as will not materially and adversely affect the development, improvement, operation, or maintenance of the airport and the right of removal from said premises of such property and structures, all within a reasonable period of time after the date hereof, which shall not be construed to mean any period more than one (1) year after the date of this instrument, together with a right of ingress to and egress from said premises for such purposes; *

Figure 11-8d

* PROVIDED, FURTHER, that if any or all of the buildings and improvements described herein revert to Party of the First Part under the terms hereof, and at the time of such reversion some are located on land of Party of the Second Part not subject to reversion to Party of the First Part, Party of the First Part shall be allowed twelve (12) months from the date of such reversion to remove same, together with the right of ingress and egress for such purposes.

TO HAVE AND TO HOLD said premises, with appurtenances, subject to the exceptions, reservations, restrictions and conditions referred to and set forth in this instrument, unto said Party of the Second Part, its successors and assigns, forever.

By the acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, its successors and assign, forever.

By the acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, its successors and assigns, agrees that the surrender of leasehold and the transfer of the property transferred by this instrument, is accepted subject to the following restrictions set forth in subparagraphs (1) and (2) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and applicable rules, regulations and orders: *

Figure 11-8e

(1) That, except as provided in subparagraph (6) of the next succeeding unnumbered paragraph, the land, leased premises, buildings, structures and improvements in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the term "exclusive right" as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term "airport" shall be deemed to include at least all such leased premises, buildings, structures and improvements;

(2) That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in Title 44, C.F.R. Chapter 1, Subchapter C, Section 101.19 (15 F.R. 1346) approved March 8, 1950, and all structures and improvements in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable condition, provided, however, that such maintenance shall be required as to structures and improvements only during the remainder of their estimated life, as determined by the Administrator of the Federal Aviation Agency. In the event materials are required to rehabilitate or repair certain of the aforementioned structures and improvements, they may be procured by demolition or other structures and improvements transferred hereby and located on the above described premises which have outlived their use as airport property in the opinion of the Administrator of the Federal Aviation Agency. *

Figure 11-8f

* By acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, for itself, its successors and assigns, also assumes the obligations of, covenants to abide by and agrees to, and this transfer is made subject to, the following reservations and restrictions set forth in subparagraphs (1) to (7), inclusive, of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and applicable rules, regulations and orders:

(1) That insofar as it is within its powers, the Party of the Second Part shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(2) That the United States of America (hereinafter sometimes referred to as the “Government”) through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any of the property transferred by this instrument is located or used, without charge: Provided, however, that such use may be limited as may be determined at any time by the Administrator of the Federal Aviation Agency to be necessary to prevent undue interference with use of other authorized aircraft: Provided, further, that the Government shall be obligated *

Figure 11-8g

* to pay for damages caused by such use, or if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, commensurate with the use mace by it.

(3) That during any national emergency declared by the President of the United States of America or the Congress thereof, the Government shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which any of the property transferred by this instrument is located or used, or of such portion thereof as it may desire, provided, however, that the Government shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; Provided, further, that the Government shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively of any improvements to the airport made without United States aid.

(4) That no exclusive right for the use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term “exclusive right” being defined to mean: *

Figure 11-8h

* (a) Any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;

(b) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the Party of the Second Part by the provisions of this instrument.

(6) That no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the Party of the Second Part for other than airport purposes without the written consent of the Administrator of the Federal Aviation Agency which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located;

(7) The Party of the Second Part does hereby release the Government and will take whatever action may be required by the Secretary of the _____ to assure the complete release of the Government from any and all liability the Government may be under for *

Figure 11–8i

* restoration or other damages under any lease or other agreement covering the use by the Government of the Airport, or part thereof, owned, controlled or operated by the Party of the Second Part, adjacent to which, or in connection with which, any property transferred by this instrument was located or used; provided, that no such release shall be construed as depriving the Party of the Second Part of any right it may otherwise have to receive reimbursement under Section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal agency.

By acceptance of this instrument or any rights hereunder, the Party of the Second Part further agrees with the Party of the First Part, as follows:

(1) That in the event that any of the aforesaid terms, conditions, reservations or restrictions are not met, observed, or complied with by the Party of the Second Part, or any subsequent transferee, whether caused by the legal inability of said Party of the Second Part or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the Party of the Second Part, or any portion thereof, shall at the option of the Party of the First Part revert to the Party of the First Part sixty (60) days following the date upon which demand to this effect is made in writing by the Administrator of the Federal Aviation Agency, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions,*

Figure 11-8j

* reservations and restrictions shall have been met, observed or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the Party of the Second Part, its transferees, successors and assigns.

(2) That if the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the Government may exercise its option to cause the title, right of possession and all other rights transferred to Party of the Second Part, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

This conveyance shall not in any manner waive, cancel, or abridge any rights previously granted or reserved to the Government by Quitclaim Deed dated June 8, 1948, to the City of _____ by Instrument of Transfer dated December 21, 1948, to the City of _____, or by any other agreement or instrument.

(3) This conveyance is not subject to Title 10, United States Code, Section 2662. *

Figure 11-8k

* IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its name by the Secretary of the Army (by direction of the Secretary of the Air Force) and the seal of the Department of the Army (Air Force) to be hereunto affixed, this _____ day of _____, 19 _____.

UNITED STATES OF AMERICA

By _____
Secretary of the Army
(leave blank for Air Force)

WITNESSES:

_____

_____

_____

THE FOREGOING INSTRUMENT is also executed and accepted for and in behalf of the Party of the Second Part by _____ its (Mayor), and attested by its (City Clerk), and its seal hereunto affixed this _____ day of _____, 19 _____ .

(City of _____, _____)

By_____
(Mayor)

(NOTE: Deed should provide for acknowledgment by the appropriate Secretary and Officer executing for the grantee. This form may not be used when fee owned land in excess of $1,000 value is to be conveyed.)

Figure 11-81

APPLICATION FOR REAL PROPERTY
FOR THE CONSERVATION OF WILDLIFE

(Place) _____

(Date) _____

To: District Engineer

_____
(Address)

The _____ acting by and through
(State Government)

_____

_____
(Street Address)

of the City of _____ pursuant to the provisions of the Act of Congress approved May 19, 1948 (Public Law 537, 80th Congress), and to the Rules and Regulations of the General Services Administration, hereby expresses its intention to acquire from the United States of America the following described property described in detail in "Program of Utilization" attached hereto and made a part hereof as "Exhibit A," located at the installation identified as follows:

(Here insert the name of the installation where the property desired is located.)

The Government reserves the right, as its interest may require, to reject any and all requests, or part of any request for property contained in this application; to waive defects, informalities, and irregularities; and to permit alteration of this application by the State by increasing or decreasing the property to be acquired herewith.

Enclosed herewith is a certification as to the authority of the undersigned to execute this application and to do all other acts necessary to consummate the transaction.

The undersigned agrees that this application is made upon the further terms and conditions: *

Figure 11-9a

* 1. Upon approval of this application, notice in writing of the extent of the property which may be transferred and of any boundary surveys which may be required to be performed at the expense of the transferee will be transmitted by the District Engineer, _____ to the undersigned.

2. Within five days from the receipt of such notice, the undersigned will elect to accept transfer of the property or to withdraw its application and will communicate such election in writing to the District Engineer at the above address.

3. It is understood that property transferred as a result of this request will be subject to:

(a) Reservation by the United States of all oil, gas, and mineral rights;

(b) The condition that the property shall continue to be used for wildlife conservation; and

(c) The condition that in the event the property transferred is no longer used for such purposes, or in the event the property is needed for national defense purposes, title thereto shall revert to the United States.

In support of its eligibility for transfer of the requested property, the undersigned submits a proposal entitled "Program of Utilization," in an original and five copies, which are attached hereto as Exhibit A, which proposal is drawn in accordance with, and contains the information required by "Instructions for Preparation of Applications for Real Property for the Conservation of Wildlife."

STATE OF _____

By _____

WITNESSES:

_____

_____

Figure 11-9b

PROGRAM OF UTILIZATION

Real Property for the Conservation of Wildlife

Exhibit "A" of Application dated _____ 19 ____

Outline. The following information must be submitted under the above title and date line as a part of each application in connection with each property requested:

a. Name of Applicant Agency and Representative.

(1) Legal name of prospective transferee; and

(2) Name, title, and address of person having authority to consummate transaction as shown by attached certificate.

b. Property Name and Location.

(1) Name and identification of property; and

(2) Location of property the subject of this request:

(a) County;

(b) Nearest town; and

(c) Distance and direction from nearest town.

c. Description of Property.

(1) Land:

(a) Acreage;

(b) Boundaries - by legal description;

(c) Types of land, expressed as percentage of the total requested: (a) agriculture, (b) wild hay, (c) grazing, (d) timber lands, (e) marsh, (f) brush, (g) submerged land, (h) lakes, (i) river, (j) other types;

(d) Land suitability: Discuss (a) farming, (b) grazing (c) trapping, (d) hunting, (e) logging, (f) fisheries, (g) other;

(e) Timber: Describe species and whether virgin, culled, or cut-over, approximate average stand. *

Figure 11-9c

* (2) Buildings: Describe individually by building number and designation as “Barracks,” “PX,” etc., and give dimensions and square feet of floor space.

(3) Utilities:

(a) Designation; and

(b) Description.

b. Program Brief. Here give in detail a complete plan for the administration and utilization of the property covering thoroughly the following:

(1) Portion of area to be set aside as refuge;

(2) Wildlife species to be primarily benefited;

(3) What protection will be afforded wildlife;

(4) What uses will be made of the lands other than for game propagation; and

(5) Specific use for each structure and for utilities.

e. Proof of Need.*

f. Suitability of Property. *

g. Plans to Finance and Maintain the Property. *

h. Tax or Public Revenue Support. *

i. Current and Planned Land Utilization for Wildlife Conservation. *

*Items e through i should be prepared in accordance with e through i of the instructions.

Conclude with a statement under oath as required in the instructions. *

Figure 11-9d

INSTRUCTIONS FOR PREPARATION OF APPLICATIONS FOR REAL PROPERTY FOR THE CONSERVATION OF WILDLIFE

1. General.

a. Separate Applications. A separate application for such property shall be submitted for each surplus installation or portion thereof. Each application must have attached as a part thereof a “Program of Utilization.”

b. Preparation and Distribution of Applications. Applications for such property shall be prepared in an original and five signed copies.

(1) The original and copies as indicated above, consisting of “Application for Real Property for the Conservation of Wildlife” and “Program of Utilization” and exhibits and certificates necessary to meet the requirements of these instructions, shall be forwarded to the Regional Commissioner, General Services Administration, _____ _____.

(2) The applicant should keep one signed copy.

2. Special Instructions. In preparing the "Program of Utilization" the specific instructions set forth-below shall be adhered to:

a. Name of Applicant Agency and Representative. Indicate the correct name of the applicant state, state commission, or agency, etc., to which conveyance may be made. The name, title, and address of the person to whom inquiries concerning the program are to be addressed shall be indicated.

b. Name and Location of Property. Indicate the official name of the surplus installation and its location, showing county and state and distance and direction from the nearest town.

c. Description of Property in Detail. The real property required shall be described. Buildings shall be identified by number, size, and type of construction. Where land and a considerable portion of an installation is applied for, a plat map of the installation, indicating the facilities required, should be attached if possible, and the total acreage, total number of buildings and structures, utilities, easements, etc., shall be summarized thereon. Such maps usually may be obtained from the installation custodian.

Figure 11-9e

* d. Program Brief. A complete program brief is required in order for the District Engineer to determine whether the property (1) can be utilized for wildlife purposes; and (2) is chiefly valuable for such purpose.

(1) Briefs should cover specific plans for such programs as:

(a) Refuge Lands. Inviolate sanctuaries for the unmolested feeding and breeding of wildlife, generally unavailable to the public;

(b) Game Management Units. Areas of value for the feeding, resting, and breeding purposes, part or all of which may be open to controlled public shooting during specified periods as a means of harvesting the surplus wildlife crop;

(c) Nurseries and Game Farms. Limited areas within the state to be used for the production of food plants and certain game species for planting and release on other areas within the state; and

(d) Research Areas. Units primarily used for research purposes in studying the life history, habits and management procedures of wildlife species in their native habitat.

(2) Programs which contemplate the unrestricted harvesting of game or the unrestricted shooting or trapping thereof or which for any reason do not contemplate positive action on the part of the requesting state to protect and/or propagate wildlife will not be acceptable. Areas sought solely for field trials, dog runs, etc., are not subject to transfer under the provisions of Public Law 537, 80th Congress.

e. Must Show Definite Proof of Need. Surplus property may not be determined to be chiefly valuable for the conservation of wildlife except where property is shown to be needed for such purposes. It is important that definite proof of need and the degree of inadequacy of existing facilities in the area where the property is sought be reflected in the program.

f. Must Show Suitability or Adaptability. The facilities to be conveyed must be suitable for the program proposed, or readily adaptable to such purposes. A statement as to suitability and/or plans for conversion of the property is required.

g. Must Evidence Plans to Finance and Maintain Property. A full and complete statement of ability to finance, operate, and maintain the facilities to be acquired shall be reflected, and plans for the conversion, staffing, operation and maintenance shall be discussed fully. *

Figure 11-9f

* h. Tax or Public Revenue Support. Indicate the degree of tax support. Include any appropriation of public revenues for the operation of the facilities either through contracts for services, etc., or direct appropriation.

i. Current and Planned Land Utilization for Wildlife Conservation. Attach, for the original and for each copy of the application, copies of a map of the state and show thereon the location, acreage, and program designation for each area being used by the state and/or its agencies for wildlife conservation purposes, and indicate by different color or shading the location, acreage, and proposed use of the property requested in this and previous applications and also other property which the state proposes to acquire for wildlife conservation purposes under the provisions of Public Law 537. Also, as paragraph "i" of the "Program of Utilization," itemize all requests previously submitted for property under the provisions of Public Law 537, identifying each by name of installation from which the property was requested, by date of request, and by acreage requested.

j. Statement Under Oath. The authorized official of the state instrumentality making this application shall state under oath that the applicant is an instrumentaility of State Government; and that the facilities to be acquired will be used chiefly for the conservation of wildlife. This statement shall be attached to the application.

k. Notice of Intent and Time of Filing. Neither written nor oral inquiries nor oral requests to withhold the disposal of property will be given consideration. Before the District Engineer will take action on a proposal to acquire property, it must receive a formal letter of intent, or an executed application, to acquire such property. However, any requestor filing a timely letter of intent will be given thirty days from the date the letter of intent is received in the District Engineer's office in which to submit a formal application. *

Figure 11-9g

SAMPLE DEED FOR CONVEYANCE OF LAND AND IMPROVEMENTS FOR CONSERVATION OF WILDLIFE

THIS INDENTURE by and between the United States of America, acting by and through the Secretary of the Army (Air Force) under and pursuant to the powers and authority contained in the Act of 19 May 1948, C.310, 62 Stat. 240, 241 as amended, 16 U.S.C. 667 b-d (1958 ed.), and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended 40 U.S.C. Chapter 10 (1958 ed.) and the delegation of authority to the Secretary of Defense from the Administrator of the General Services Administration dated 28 March 1957, 22 Fed. Reg. 2265 - 2266, and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) dated 24 April 1957, 22 Fed, Reg. 3164, Party of the First Part and the State of _____. Party of the Second Part:

WITNESSETH:

That the said party of the first part for and in consideration of the continuous use and management of the property hereinafter described for wildlife conservation purposes, and the benefits that will accrue to the United States from its continued use for such purposes, and its taking subject to the reservations, restrictions, and conditions hereinafter set out, does release and quitclaim to the said party of the second part, *

Figure 11-l0a

* under and subject to the said reservations, restrictions, and conditions, all its right, title and interest in and to the following described property in the county (ies) of _____ State of _____, to wit:

DESCRIPTION

(Metes and bounds description)

being (apart of) the same property acquired by the United States of America under _____, recorded in _____.

TO HAVE AND TO HOLD the foregoing described premises, together with all and singular, the appurtenances, rights, powers, and privileges thereunto belonging or in anywise appertaining, subject to the reservations, restrictions, and conditions hereinafter set forth, unto the said party of the second part.

The land and property conveyed by this instrument are subject to the reservation by the United States of all oil, gas, and other minerals, and there is reserved to the United States all oil, gas, and other minerals in the land conveyed hereby, together with the right of the United States, its authorized agents, representatives, lessees, or assigns, to enter upon the said land at any time to prospect for, mine, drill for, and remove, any and all such minerals.

The land and property conveyed by this instrument are subject to the condition that they shall be continuously used and managed for the conservation of wildlife and are conveyed upon and subject to the condition *

Figure 11-10b

* that if they are no longer used for such purposes title thereto shall revert to the United States and the title of the state thereto, its successors and assigns, shall thereupon cease and determine and the United States shall have the immediate right of possession thereof and right of entry thereon.

The land and property conveyed by this instrument are subject to the further condition that in the event the President of the United States, the Congress thereof, the Secretary of Defense, or the Secretaries of the Army, Navy, or Air Force, or either of then, their successors in function or duly authorized representatives, determines that the said land and improvements are needed for national defense purposes, title of the state thereto, its successors and assigns, shall thereupon cease and determine and the United States shall have the immediate right of possession thereof and right of entry thereon.

IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its name by the Secretary of the Army (by direction of the Secretary of the Air Force) and the seal of the Department of the Army (Air Force) to be hereunto affixed, this _____ day of_____, 19 _____.

UNITED STATES OF AMERICA

WITNESSES:

By _____
Secretary of the Army
(Leave blank for Air Force)

_____

_____ Acknowledgment *

Figure 11-10c

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

* REPLY TO
ATTENTION OF:

NOTICE OF CANCELLATION
(RESTORATION)

(Addressee)

Re: Notice of Cancellation of Lease No. _____
(Location of Property)

(Salutation)

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will quit, relinquish, and give up the premises on the _____ day of _____ 19 _____.

Request acknowledgment in space below with your signature being witnessed and return _____ copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by supplemental agreement to the lease contract.

Your cooperation in making this property available to the Government is very much appreciated.

UNITED STATES OF AMERICA

BY _____

Receipt of the above notice is hereby acknowledged. A joint survey of the condition of the premises (is) (is not) requested, as restoration (will) (will not) be required by the lessor under paragraph _____ of the lease. (Delete inapplicable words.)

WITNESS:

_____ _____ *

Figure 11-11

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO ATTENTION OF:

*

NOTICE OF CANCELLATION

(Addressee)

Re: Notice of Cancellation of Lease No. _____
(Location of Property)

(Salutation)

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will quit, relinquish, and give up the premises on the _____ day of _____ 19 _____.

Request acknowledgment in space below with your signature being witnessed and return _____ copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by supplemental agreement to the lease contract.

Your cooperation in making this property available to the Government is very much appreciated.

UNITED STATES OF AMERICA

BY _____

Receipt of the above notice is hereby acknowledged.

WITNESS:

_____ _____ *

Figure 11-12

* JOINT TERMINAL CONDITION SURVEY OF GOVERNMENT LEASED PROPERTY

ITEMS OF RESTORATION/DAMAGES

LEASE NO. _____ USING SERVICE _____

LOCATION _____ TYPE OF PROPERTY _____

LESSOR _____

The following items of restoration and/or damages have resulted from Government use of the leased premises, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control, excepted:

DESCRIPTION OF ITEM	ESTIMATED COST
1.	_____
2.	_____
3.	_____
TOTAL:	_____

The undersigned agree(s) that the above are all of the items to be considered in the restoration of the leased premises by yhe Government,

The undersigned lessor further agrees to accept the sum of $ _____ in full settlement of any and all claims (except as to any unpaid rent) against the Government arising out of the use and occupancy of the leased premises.

DATED this _____ day of _____, 19 _____

_____
(Lessor)

_____
(Representative of the Government) *

ENG Form 1440A-R
1 Feb 61

Figure 11-13

*

COST OF RESTORATION

LEASE NO. _____ USING SERVICE _____

LOCATION _____ TYPE OF PROPERTY _____

LESSOR _____

RENTAL _____ TERMINATION DATE _____

This lease provides for, and the lessor has established a legal right restoration of the leased premises by the Government.

I hereby certify that an investigation has been made as to each of the items of restoration or damages listed on the attached Joint Terminal Condition Survey and that: they are bona fide; that such resulted from use by the Government of the leased premises; that such are in excess of reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control. I further certify that the estimate of cost assigned to each item is just and fair, and that such prices are comparable to charges made to the public generally for like materials and services in the vicinity of the leased premises.

Recapitulation of restoration factors:

Estimated cost of Government improvements ----- $ _____

Estimated gross salvage value of Government improvements ---------- _____

Estimated net salvage value of Government improvements ---------- _____

Estimated cost of restoration ---------- _____

Net cost of restoration ---------- _____

It is recommended that the Government pay the lessor the sum of $ _____ in lieu of physical restoration of the premises by the Government.

DATED this _____ day of _____, 19 _____,

_____

(Representative of the Government) (Title)

Approved by _____
Title _____ *

ENG Form 1440B-R
1 Feb 61

Figure 11-14

*

PART 1

RECAPITULATION
Cost of Restoration (Engineer Estimate and Appraisal)

Lease No. _____ Condemnation Action _____

Permit _____ Other _____

1. LOCATION:

2. TYPE OF PROPERTY:

3. OWNER:

4. RENTAL:

5. Does lease or Permit Contain a Restoration Clause? _____

6. Appraised value of Lessor's Property: (Taken from appraisal attached to original lease assembly or Part 5) _____

7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures, and alterations): (Part 4) _____

8. Estimated Market Value (Value in Place of Government-owned improvements, fixtures and alterations: (Part 4) _____

9. Gross Salvage value of Government-owned property: (Part 4) _____

10. Estimated Cost of Dismantling and/or Removal of Government-owned property: (Part 4) _____ _____

11. Estimated Net Salvage Value of Government-owned Property: (Part 4) _____

12. Cost of Restoration other than Cost of Dismantling and removal (Part 3) _____ _____

13. Total Cost of Restoration: (Par 10 and Par 12) _____ _____

14. Net Cost of Restoration: (Par 9 minus Par 13) _____ _____

15. Approximate Time Required for Actual Salvaging and restoration Operations:
Salvaging - No. of days _____
Restoration - No. of days _____
TOTAL *

ENG FORM 1440-R
1 Jan 66

Figure 11-15a

*

PART 2

ANALYSIS AND RECOMMENDATIONS OF DIVISION
REAL ESTATE OFFICER OR HIS REPRESENTATIVE

Analysis

1. Lease No. _____ provides for, and the lesser has established a legal right to restoration of the leased premises by the Government to the extent hereinafter set forth.

2. The Joint Terminal Condition Survey, substantiated by investigation, indicates that certain items of damages/restoration listed therein result from use by the Government. As a consequence, there exists a legal obligation on the part of the Government to either physically restore the leased premises or effect a cash settlement in lieu of restoration.

3. The itemized list of damages, together with cost estimates of the lessor and the Government (Part 3), indicates in summary that it will cost the Government $ _____ to accomplish physical restoration of the leased premises by contract.

4. Substantiation for the pertinent cost estimates as stated in Part 1, Recapitulation, is reflected in the following supporting documents:

a. Part 3 - Itemized List of Damages with Estimate of Restoration costs.

b. Part 4 - Itemized List of Government-owned Improvements, Fixtures and Alterations Placed on Property with Estimated Values.

c. Part 5 - Fee Value Appraisal of Leased Premises. This includes data pertinent to diminution of value.

Proposed Settlement

Recommendations

Certification

I certify that the items of restoration and damages listed herein have been incurred as a result of use by the Government, and are considered above and beyond reasonable and ordinary wear and tear, and damages by the elements or by circumstances over which the Government has no control.

DATE _____ SIGNED _____
TITLE _____

Approved:
By _____
Title _____

ENG FORM 1440-R
1 Jan 66

Figure 11-15b

*

PART 3

ITEMIZED LIST OF DAMAGES RESULTING FROM GOVERNMENT USE OF THE PREMISES, REASONABLE AND ORDINARY WEAR AND TEAR AND DAMAGES RESULTING FROM CIRCUMSTANCES OVER WHICH THE GOVERNMENT HAS NO CONTROL EXCEPTED, WITH THE COST OF REPAIR OF EACH ITEM

ITEM DESCRIPTION (1)	OWNER'S ESTIMATE (2)	GOVERNMENT ESTIMATE (3)	ALLOWANCE TO OWNER* (of actual cost to Government) (4)	REMARKS (Use reverse side or additional sheets as necessary) (5)
** TOTAL				

Explanation of damage, destruction and loss paid for or restored by Government, is attached hereto.
*Where restoration work is performed by Government, show actual cost to Government.
**Total of all items to appear on last page only.

Prepared by _____ Title _____ Date _____

Approved by _____ Title _____ Date _____

Sheet _____ of _____

ENG FORM 1440-R
1 Jan 66

*

*

PART 4

ITEMIZED LIST OF GOVERNMENT-OWNED IMPROVEMENTS, FIXTURES AND ALTERATIONS PLACED ON PROPERTY, WITH ESTIMATES OF VALUE

LEASE NO.: _____
CONDEMNATION ACTION: _____
PERMIT: _____
OTHER: _____

(a)	(b) Description and Size	(c) Quantity	(d) Condition	(e) Original or Estimated Cost	(f) Market Value (value in place)	(g) Gross Salvage Value	(h) Dismantling and/or Cost of Removal	(i) Net Salvage Value (g minus h)	(j) Cost of Restoration as Result of Removal	(k) Remarks (use reverse side or additional sheets)

Prepared by _____ Title _____ Date _____

Approved by _____ Title _____ Date _____

*

ENG FORM 1440-R
1 Jan 66

Sheet ____ of ____

Figure 11-15d

PART 5

REAL PROPERTY APPRAISAL ANALYSIS AND RECOMMENDATIONS

(Date)

NOTE: In order that the appraisal can serve as a proper basis for, and support of, determinations required by Section IV of this Regulation, the appraisal should provide an estimate of the current value of the property in its unrestored condition and the current value of the property as restored.

BY _____

TITLE _____

Reviewed and Approved (date)

BY _____

TITLE _____

ENG FORM 1440-R
1 Jan 66

Figure 11-15e

*

CERTIFIED MAIL

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. Box 2711
Los Angeles, California 90053

ER 405-1-12
Change 12
27 Oct 80

SPLRE-MD-(L)

Re : NOTICE OF TERMINATION
Lease :
Property:

Dear Lessor:

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will terminate the above cited lease on _____.

Request your acknowledgement in the appropriate space below with your signature(s). Return 2 copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by Supplemental Agreement to the lease contract.

UNITED STATES OF AMERICA

By: _____
JOHN HOUSTON
Chief, Real Estate Division

R E L E A S E

I hereby release and forever discharge the Government, its officers, agents, and employees, from all claims for damages or for restoration, and from all liability that may arise out of said lease and the occupation by the Government of the property (except any unpaid rent).

DATED _____ _____

_____

R E S T O R A T I O N R E Q U I R E D

I hereby request a joint terminal inspection of the premises, as stated in paragraph ____ of said lease, as restoration other than normal wear and tear is required.

DATED _____ _____ *

Figure 11-16

DEPARTMENT OF THE ARMY
Corps of Engineers

Lease No. _____

RELEASE
(Corporations)

WHEREAS, on the _____ day of _____, 19 _____

_____

a corporation existing under and by virtue of the laws of the State of _____ with its principal office located in the city of _____ county of _____, and State of _____ did lease, demise, and let unto the United States of America certain premises situated in the city of _____, county of _____, and the state of _____, and more particularly described as follows:

WHEREAS, the use of said premises is no longer required by the United States of America and possession of said property having been redelivered by the United States of America to the lessor, on the _____ day of _____, 19 _____.

Now, Therefore, Know All Men By These Presents, that we, _____

_____

for and in consideration of the sum of One Dollar and other valuable considerations, the receipt of which are hereby acknowledged, have remised, released, and forever discharged and by these presents do for ourselves, our successors, and assigns, remise, release, and forever discharge the United States of America, its officers, agents, employees of and from all manner of actions, liability, and claims (except any unpaid rent for the period ending _____, 19 _____) against the United States of America, its officers, agents, and employees which we or they ever had, *

* now have, or ever will have upon, or by reason of any matter, cause, or thing whatsoever, particularly arising out of said lease and the occupation by the United States of America of the aforementioned property.

In Witness Whereof, we have caused these presents to be signed by our

_____ attested by our _____,

and our corporate seal to be hereto affixed this _____

day of _____, 19 _____

Attest:

_____ _____

By _____ *

Figure 11-17b

FORMAT FOR

SUPPLEMENTAL AGREEMENT NO. _____

TO EMERGENCY PLANT FACILITIES CONTRACT NO. _____

This Supplemental Agreement entered into this _____ day of _____ 19 ____, by and between the United States of America, hereinafter called the Government represented by the Contracting Officer executing this Agreement and _____, a corporation organized and existing under the laws of the State of _____, of the City of _____, in the State of _____, hereinafter called the Contractor, WITNESSETH THAT:

WHEREAS, the parties hereto have previously entered into Letter Contract No. _____ under date of _____, which Letter Contract was last amended by Supplement No. 6 thereto, _____ _____; and

WHEREAS, pursuant to said contract and in accordance with the terms of Article 32 of Formal Supplement No. 3 thereto, executed by the parties on _____, and hereinafter referred to as the "principal contract," the Contractor constructed certain improvements designated in paragraph (a) of said Article 32 as Items 1 to 7 inclusive more particularly described hereinafter, on land owned by the Contractor at its plant located at _____, _____, in connection with its work under Contract No. _____, the costs for which Items l to 7 inclusive the Government has reimbursed the *

Figure 11-18a

* the Government has reimbursed the Contractor in accordance with provisions of paragraph (b) of said Article 32, and which contract provides that title to Items 1 to 4 inclusive listed in the said paragraph (a) shall vest in the Government upon reimbursement by the Government to the Contractor of the costs thereof and that said Items 1 to 4 inclusive, hereinafter sometimes referred to as "Government-owned improvements," and all materials incorporated in for forming a part of said Items shall be deemed personality even though affixed to realty, and which contract further provides that title to said Items 5 to 7 inclusive shall be and remain in the Contractor, the Contractor to use said Items 1 to 7 inclusive without payment of rental therefor, in connection with its work under the said contract; and

WHEREAS, said contract further provides that the Contractor shall retain title to said Items 5 to 7 inclusive for a period of five years from the completion or termination of Contract No. _____, and that with respect to all improvements designated Items 1 to 7 inclusive the Contractor shall, for a of five years from the completion or termination of said Contract, perform certain obligations set forth in paragraph (e) of said Article 32 of the principal contract, which paragraph (e) further provides that the Contractor shall be released from the said obligations with respect to the said Items 1 to 7 inclusive as follows:

(1) Items 1 and 2, upon payment by the Contractor of the Government of the "added value" (as the same is defined in paragraph (h) of *

Figure 11-18b

* this article) of all such improvements, or upon the election by the Government to purchase the land upon which the same are located or to convey to the Contractor as provided for in paragraph (k);

(2) Items 3 and 4, upon payment by the Contractor to the Government of the "added value" of such improvements;

(3) Items 5, 6, and 7 upon the written determination of the Contracting Officer that the Government's interests will not be adversely affected by releasing the Contractor from such obligations and in any event upon the Contractor's being released from the above obligations with respect to the improvements described in Items 1, 2, 3, and 4 of paragraph (a); and

WHEREAS, pursuant to provisions of paragraph (g) (1) of said Article 32, the parties hereto have mutually agreed that the added value of Contractor's plant (as the same is defined in said paragraph (h) by reason of the Government-owned improvements designated as Items 1, 2, 3, and 4 is in the sum of Ninety Thousand Dollars ($90,000.00); and

WHEREAS, it has been determined to be advantageous and in the interest of the Government to convey the said Items 1, 2, 3, and 4 to the Contractor upon payment to the Government of the said sum agreed upon by the added value to the plant of the Contractor,

NOW THEREFORE, pursuant to provisions of said contract and supplements thereto, and in consideration of the premises as well as the mutual obligations of the parties herein made and undertaken, the parties do mutually agree as follows: *

Figure 11-18c

* 1. That the Government, under authority of the Federal Property and Administrative Services Act of 1949, as amended, and regulations issued thereunder, and for and in consideration of the payment of Ninety Thousand Dollars ($90,000.00), and the covenants, promises, and agreements on the part of the Contractor, herein contained and made, agrees and hereby does, effective as of _____ sell, relinquish, transfer and deliver to the Contractor without warranty, express or implied, and the Contractor agrees to and hereby does for the price of Ninety Thousand Dollars ($90,000.00) aforesaid, payable in full on or before _____, 19 ____, purchase all rights, title and interest of the Government in and to the following property:

Item 1 - An addition to the west side of the existing plant at the north and thereof containing approximately 44,600 square feet, sometimes referred to as the "main addition."

Item 2 - A building approximately 12 feet by 12 feet located just west of the main addition, sometimes referred to as the "Switch house."

Item 3 - An addition to the west side of the existing plant at the south end of the present tool room containing approximately 2,500 square feet, sometimes referred to as the "tool room addition."

Item 4 - A building approximately 21.4 feet by 41.4 feet located a short distance west of the tool room addition and used for plant and oil storage, sometimes referred to as the "paint and oil storage house."

2. That the Government, as of the _____, 19 ____, releases the Contractor from all obligations under the said contract, as *

Figure 11-18d

* supplemented with respect to Items 1, 2, 3, and 4 listed in the foregoing paragraph, and releases the Contractor from all obligations set forth in paragraph (e) of said Article 32 of the principal contract with respect to said Items 1 to 7 inclusive.

3. That the Government, as of _____, 19 ____, cancels and relinquishes forever any rights and licenses granted to it by the Contractor under the terms of Contract No. _____ and supplements thereto, relating to the said Items 1 to 4 inclusive.

4. That the Contractor will, on _____, 19 ____, accept the surrender of the said Government-owned improvements heretofore designated as Items 1, 2, 3, and 4 and appurtenances thereto, in their present condition, and will assume the custody and care of said improvements and the risk of loss or damage thereto by fire or any other cause thereafter, the Government being thereafter relieved from any responsibility therefor.

5. That the Contractor relinquishes and forever dischares the Government, its officers, agents and employees of and from all manner of actions, liabilities and claims which, against the Government, its officers, agents and employees, the contractor now has or ever will have, for the restoration of the land upon which the said improvements designated Items 1 to 4 inclusive were constructed and for any restoration whatsoever of the property of the Contractor in connection with said Items 5, 6 and 7, and for any matter, cause of thing whatsoever arising out of the occupation by the Government or the aforesaid land or buildings of the Contractor, under the said contract and supplements thereto. *

Figure 11-18e

* 6. That the Contractor warrants that it has examined the premises and the buildings and structures thereon and appurtenances thereto to be conveyed hereunder and is fully familiar with the conditions of the same and the Government makes no representation or warranties as to the condition of any item thereof.

7. That the Contractor represents and warrants that it intends that all property being acquired under this contract shall be used in its production and that it is not acquiring any of such property for the purpose of reselling it directly or indirectly at a profit.

8. Except as herein modified, either expressly or by necessary implication, all the terms, covenants and conditions of Contract No. _____, as amended shall continue in full force and effect and apply equally to the provisions herein.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the _____ DAY OF _____, 19 ____.

THE UNITED STATES OF AMERICA

BY _____

_____

BY _____

_____ *

Figure 11-18f

*

CERTIFICATE

I,_____, certify that I am the_____ _____Secretary of the Corporation named as Contractor herein; that_____who signed this contract on behalf of the Contractor was then_____of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate seal) _____ *

Figure 11-18g

* C O P Y AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND THE SMALL BUSINESS ADMINISTRATION FOR THE DEVELOPMENT OF A PROGRAM OF ASSISTANCE FOR SMALL BUSINESS CONCERNS IN THE SALE OF TIMBER AND RELATED FOREST PRODUCTS FROM FORESTS ON FEDERAL LANDS UNDER THE JURISDICTION OF DEPARTMENT OF DEFENSE

SECTION I. PURPOSE

The purpose of this Memorandum of Understanding between the Department of Defense (DOD) and the Small Business Administration (SBA) is to implement the provisions of the Small Business Act, as amended, relative to the sale of Government timber in such manner as will effectuate sections 8(b)(7) and 15 of the Small Business Act.

SECTION II. UNIFORM POLICY COVERING ASSISTANCE TO SMALL BUSINESS CONCERNS

The DOD will issue regulations requiring each military department to cooperate with SBA in an effort to aid, counsel, assist and protect, insofar as possible, the interests of small business concerns in acquiring timber and to insure that a fair proportion of the total sales be made to such concerns.

The regulations will also require each military department in cooperation with the Small Business Administration:

(A) To utilize to the fullest extent SBA facilities inventory files in order to identify interested small business concerns;

(B) To develop and disseminate sales promotion information designed to broaden small business participation;

(C) To review the terms and conditions of sales programs to assure that participation by small business concerns is being encouraged; *

Figure 11-19a

*

(D) To utilize the definition of small business established by SBA to maintain records to reflect the sales of timber made to small business concerns;

(E) To review periodically the results of sales programs to assure that small business is receiving a fair proportion of the total sales of timber;

(F) To utilize the certificate of competency authority vested in SBA by section 8(b)(7) of the Small Business Act when timber is being sold on a credit basis.

SECTION III. CERTIFICATES OF COMPETENCY

In cases of timber being sold on a credit basis, whenever a small business concern has submitted an otherwise acceptable bid or proposal but has been determined by the disposal officer not to be responsible as to capacity or credit, and if the bid or proposal is to be rejected solely for this reason: (1) SBA shall be notified of the circumstances so as to permit it, if warrented, to process a Certificate of Competency, and (2) award shall be withheld pending SBA action up to 10 working days from date of notification.

This procedure shall be mandatory for all sales except where the contracting officer certifies in writing that award must be made without delay and a statement justifying the action is signed by the contracting officer and placed in the contract file.

To assist SBA in determining the capacity and credit of any small business concern involved in a particular sale, the selling agency shall *

* make available to SBA, at the time of notification, all available pertinent data, including technical and financial information, with respect to the small business concern involved.

SECTION IV. JOINT SET-ASIDE DETERMINATION

The DOD will afford the SBA an opportunity to review its proposed program of timber and other forest product offerings involving sales which have an estimated value of $2,000 or more. It is agreed that the SBA will consider the forest management and other pertinent factors involved in such program and will review such matters with the contracting officer before requesting a set-aside. Following consideration and review of the said factors the SBA may request in writing that the contracting officer make certain set-asides for small business concerns under authority of Section 15 of the Small Business Act.

The contracting officers of the DOD will agree to and will make set-asides when recommended by SBA unless such action is inconsistent with program requirements of the DOD, in which case the DOD will submit its reasons for refusal to SBA in writing.

If a set-aside has been agreed to and subsequent events indicate that such action would not be in the best interest of the Government, the contracting officer will request the SBA representative to concur in a withdrawal of the joint determination; if the SBA representative concurs, the set-aside will be canceled; if the SBA representative does not concur, he will be given an opportunity to express his opinion, but the final decision for all sales action will remain with the contracting officer. *

* SECTION V, PROCEDURES

DOD, in cooperation with SBA, will develop its own operational procedures designed to carry out this Memorandum of Understanding, Such procedures will be similar in effect to Chapter VII, Section 703, SBA Manual 600.

SECTION VI. AMENDMENT

This Understanding may be amended at any time by written agreement of the parties.

SECTION VII. EFFECTIVE DATE

This Understanding shall take effect upon the date of the execution thereof.

EXECUTED BY: DATE:

Signed: JOHN E. HORNE 20 May 1979
Administrator, Small Business Administration

Signed: THOMAS D. MORRIS 16 May 1979
Assistant Secretary (IL&FM), Department of Defense *

Figure 11 - 19d

* CERTIFICATE AS TO SMALL BUSINESS STATUS

The bidder certifies that he (is) (is not) a small business concern within the terms of the following definition:

In sales of Army forest timber a “small business" is a concern that: (1) is primarily engaged in the logging or forest products industry; (2) is independently owned and operated; (3) is not dominant in its field of operation; and (4) together with its affiliates does not employ more than 500 persons.

(From 13 CFR 121,3-9(b),
Rev. 29 Fed. Reg. 2988, 5 Mar 64)

_____ _____
DATE SIGNATURE OF BIDDER

Intentional falsification of this certificate is a criminal offense punishable by a fine of not more than $5,000 or by imprisonment for not more than two years, or both. (Title 15, United States Code, Section 645 (a).)

INSTRUCTIONS: This certificate must be attached to and is a part of every invitation to bid on the sale of Army timber with an estimated value of $2,000 or more. Failure to properly execute this certificate will not invalidate a bid, but a proper statement must be signed before the bid is accepted by the Government. Refusal or delay in executing a proper statement is grounds for rejecting the bid. *

Figure 11-20

Invitation No._____

DEPARTMENT OF THE ARMY

(Name and Address of Issuing Office)

INVITATION FOR BIDS, BID AND ACCEPTANCE

SALE OF SURPLUS REAL PROPERTY

I N V I T A T I O N F OR B I D S

Sealed bids will be received until _____(time of day)_____ on _____(date)_____, 19____, at _____(place)_____ and then and there publicly opened, for purchase, subject to the terms and conditions and in accordance with the instructions to bidders hereinafter contained, of Government-owned real property described as follows (including any described related personal property and appurtenances, and subject to any stated exceptions, reservations and restrictions) : _____

_____

The terms and conditions of the sale and instructions to bidders are as follows:

1. All bids submitted shall be deemed to have been made with full knowledge of all of the terms, conditions, and requirements herein contained.

2. The property offered for sale is now subject to inspection by prospective bidders. The District Engineer,_____ will, upon request, arrange for inspection of the property, and will furnish such further information as may be necessary with respect to the terms, conditions and instructions herein contained. Any title evidence, including abstracts, and continuations thereof, title certificates, or policies of title insurance which may be desired by the successful bidder will be procured by him at his sole cost and expense. The Government will, however, permit examination and inspection of such deeds, abstracts, tax receipts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title to the property involved, as it may have available. The *

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Figure 11-21a

* failure of any bidder to inspect, or to be fully informed regarding the title to or the condition of all or any portion of the property, or negligence or mistake on the part of the bidder in preparing the bid, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after and prior to award opening. The foregoing description of the property is believed to be sufficiently specific for purposes of identification. Any error or omission in such description shall not constitute any ground or reason for non-performance of the contract or claim by the successful bidder for any allowance, refund, or deduction from the amounts offered. The property is offered for sale "as is" and "where is." The Government does not make any guaranty or warranty, express or implied, with respect to the property as to title, quantity, quality, character or condition, size or kind; or that the property is in condition or fit to be used for the purpose for which intended.

3. The sale will be on an all-cash basis. Each bid must be accompanied by a certified check, cashier's check or postal money order, payable to the order of the "treasurer of the United States" (1) for the full amount bid if such amount is $250.00 or less, or (2) for 25% of the amount bid, or $250.00, whichever is greater, if the amount bid is more than $250.00. All bids will remain open for acceptance or rejection for a period of _____ days from the date of opening bids. The deposit of the successful bidder will be retained by the Government to apply against payment of the purchase price and deposits of unsuccessful bidders will be returned, without interest, as promptly as possible after rejection, provided, however, that in the event of default by any bidder hereunder, that bidder's deposit may be applied by the Government to any loss, cost and expense occasioned to the Government thereby, including any 1oss, cost and expense incurred in selling the property and including any difference between the amount specified in the bid and the amount for which the Government may sell the property, if the latter amount be less than the former. The bidder is liable for the full amount of damages sustained by the Government because of his default; such liability is not limited to the amount of the bidder's deposit.

4. The balance of the purchase price will be paid by the successful bidder with _____ days after notice has been given by the Government of its readiness to deliver a deed. The United States will thereafter deliver to the successful bidder a quitclaim deed (and bill of sale, if needed to cover any related personal property) conveying all right, title, and interest of the United States in and to the property, without warranty, express or implied. The successful bidder will pay any required documentary revenue stamp tax. Title and the right of possession will remain in the United States until the deed has been delivered. The formal instruments of conveyance shall within a reasonable time after delivery be placed of record in the manner prescribed by local recording statues, *

Figure 11-21b

* all at the sole cost and expense of the successful bidder. The successful bidder will assume possession of and responsibility for the property upon delivery of the deed.

5. Sealed bids must be executed and submitted in quadruplicate on the bid form accompanying this Invitation for Bids, Bid and Acceptance or on exact copies thereof. Additional copies of the bid form may be obtained from the District Engineer.

6. A bid executed by an attorney or agent on behalf of the bidder must be accompanied by four authenticated copies of his Power of Attorney or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the CERTIFICATE OF CORPORATE BIDDER must be executed. If the bid is signed by the secretary of the corporation, the CERTIFICATE must be executed by some other officer of the corporation under the corporate seal. In lieu of the CERTIFICATE OF CORPORATE BIDDER, there may be attached to the bid copies so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

7. The invitation number and bid-opening time must be plainly marked on the left side of envelopes in which bids are submitted, for example:

_____

Return Address

Sealed Bid
To be opened:

Time _____

Date _____

INVITATION NO. _____

To:
REAL ESTATE DIVISION

_____

_____

8. It will be the duty of each bidder to see that his bid is delivered by the time and at the place prescribed in the invitation. Bids received prior to the time of opening will be securely kept, unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no bid or modifications of a bid or withdrawals of a bid received thereafter will be considered, except that those received before award is made but delayed in the mails by occurrences beyond control of the bidder maybe considered if written certification is *

Figure 11-21c

* furnished by authorized postal authorities to that effect. No responsibility will attach for the premature opening of a bid not properly addressed and identified. All modifications of a bid or withdrawals of a bid must be in writing. Telegraphic bids will not be considered, but modifications or withdrawals by telegraph of bids already submitted will be considered if received prior to the time set for opening bids.

9. At the time fixed for the opening of bids, their contents will be made public by announcement for the information of bidders and others properly interested who may be present either in person or by representative, provided, however, that any information submitted in support thereof, the disclosure of which might tend to subject the person submitting it to a competitive business disadvantage, will upon request be held in strict confidence by the United States.

10. The right is reserved, as the interest of the Government may require, to reject any or all bids, to waive any defect or informality in bids received, and to accept or reject any bid or portion thereof.

11. Notice of acceptance or rejection of bids and notice that the Government is ready to deliver a deed and/or Bill of Sale shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder or his duly authorized representative at the address indicated in the bid.

12. Except as otherwise provided in this Invitation for Bids, any dispute concerning a question of fact arising under this Invitation for Bids which is not disposed of by agreement shall be decided by the District Engineer, who shall reduce his decision to writng, and mail or otherwise furnish a copy thereof to the bidder. The decision of the District Engineer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the bidder mails or otherwise furnishes to the District Engineer a written appeal addressed to the Secretary of the Army. The decision of the Secretary, or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the bidder shall be afforded an opportunity to be heard and to offer evidence in support of appeal. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the performance of the contract and in accordance with the District Engineer's decision. This condition does not preclude consideration of questions of law provided that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law. *

Figure 11-21d

* 13. This Invitation for Bids, including all the instructions, and conditions set forth herein, and the Bid, when accepted by the Government, shall constitute the contract of sale between the successful bidder and the Government. Such agreement shall constitute the whole contract, unless modified in writing and signed by both parties. No oral statements or representations made by, for, or ostensibly on behalf of either party shall be a part of such contract. Neither this contract, nor any interest therein, shall be transferred or assigned by the successful bidder.

14. No member of or delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. The successful bidder warrants that he has not employed any person or agency to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul the contract without liability or at its option to recover from the successful bidder the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the successful bidder upon a contract secured or made through bona fide established commercial agencies maintained by the successful bidder for the purpose of doing business. “Bona fide established commercial agencies” has been construed to include licensed real estate brokers engaged in the business generally. *

Figure 11-21e

*

Invitation No._____

B I D

_____
Place

_____
Date

To: (Name and Address
of Issuing Office)

The undersigned_____
a corporation existing under the laws of the State of_____
or a partnership consisting of_____
or an individual trading as_____
of_____
(Address and Telephone Number)
hereby offers to purchase from the United States of America, subject to the terms and conditions and in accordance with the instructions to bidders contained in Invitation for Bids No._____, attached hereto and made a part hereof, the right, title, and interest of the United States in and to the property described in said invitation for _____($_____)_____.

Inclosed is a certified check, cashier's check, or postal money order payable to the order of the Treasurer of the United States, in the amount of _____($_____)_____.

By:

(Business address) *

Figure 11-21f

* Certificate of Corporate Bidder

I,_____
certify that I am the_____Secratary of the corporation named as bidder herein; that_____, who signed this bid on behalf of the bidder, was then_____ of said Corporation; that said bid was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

SEAL

_____

ACCEPTANCE BY THE GOVERNMENT

The foregoing bid is hereby accepted by and on behalf of the United States this_____day of_____, 19_____.

(Name)_____

(Title)_____ *

Figure 1l-21g

* Invitation No._____

DEPARTMENT OF THE ARMY

(Name and Address of Issuing Office)

INVITATION FOR BIDS, BID AND ACCEPTANCE

SALE AND REMOVAL OF BUILDINGS (OR OTHER REAL ESTATE IMPROVEMENTS)

LOCATED AT_____

I N V I T A T I O N F O R B I D S

Sealed bids will be received until_____(time of day)_____ on_____, 19____, at _____(place)_____ and then and there publicly opened, for the purchase and removal from the site, subject to the terms and conditions and in accordance with the instructions to bidders hereinafter contained, of that Government-owned property described on the accompanying bid form. This invitation does not include personal property, except fixtures firmly attached, unless specifically listed or identified herein.

The terms and conditions of the sale and instructions to bidders are as follows:

1. All bids submitted shall be deemed to have been made with full knowledge of all of the terms, conditions, and requirements herein contained.

2. (Note: To be modified at discretion of the District Engineer, as provided by applicable regulations.) Bids may be submitted for one or any number of items but a separate amount must be bid for each item for which a bid is submitted. Lump sum bids covering several ao all items will not be considered. The Government may accept or reject any item or items of any bid, unless such bid is qualified by specific limitation.

3. All bids will remain open for acceptance or rejection for a period of_____calendar days from the date of opening bids. *

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Figure 11-22a

* 4. The property for sale is located at_____ and is now subject to inspection by prospective bidders. The District Engineer,_____ will, upon request, arrange for inspection of the property, and will furnish such further information as may be necessary with respect to the terms, conditions and instructions herein contained. The failure of any bidder to inspect, or to be fully informed regarding the condition and location of all or any portion of the property will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after opening. The description of the property is believed to be sufficiently specific for purposes of identification. Any error or omission in the description (including locations, when specified) shall not constitute any ground or reason for nonperformance of the contract or claim by the successful bidder for any allowance, refund, or deduction from the amounts offered. The property is offered for sale “as is" and "where is.” The Government does not make any guaranty or warranty, express or implied, with respect to the property as to quantity, quality, character or condition, size or kind, or that the property is in condition or fit to be used for the purpose for which intended.

5. The sale will be on an all-cash basis. Each bid must be accompanied by a certified check, cashier’s check, travelers check, or postal money order, payable to the order of the “Treasurer of the United States”: (1) for the full amount bid if such amount is $100 or less; or (2) for $100 or 20 per cent of the amount bid whichever is greater if the bid is more than $100. All bids will remain open for acceptance or rejection by the Government for a period of_____ days after the date set for opening of bids by this invitation. The deposit of the successful bidder will be retained by the Government and applied as part payment of the purchase price. The balance of the purchase price must be paid within_____ calendar days after notice of acceptance of the bid has been given by the Government. Title to the property will remain in the United States until the full purchase price has been paid. The successful bidder will not remove any property until payment in full is made and a fully executed copy of the contract of sale is received from the said District Engineer, with authorization to proceed with removal. (Note: Requirement for bid deposit may be waived for state and local governments as provided in FPMR Section 101-45.302-11.

6. Upon receipt of authority to proceed with removal of the purchased property, the successful bidder will assume all responsibility for the care and protection of the property and will expeditiously remove the property from the site and restore the site in a manner and to a condition satisfactory to the_____ _____in accordance with the following specifications: *

Figure 11-22b

(Note: Insert specifications covering the extent and method for accomplishment of work to be performed in connection with each item. The specifications should indicate whether or not removal of foundations, piers, curbs, slabs, floods, etc., is required and if so to what extent, and should include instructions regarding the cutting off of utilities, the capping of utility lines, the disposal of debris resulting from salvage operations, and any other data necessary to assure a proper understanding between the contracting parties as to the work to be performed under the contract.)

The successful bidder will bear all expense involved in accomplishment of the work required here under.

7. The successful bidder will complete all removal and restoration work required hereunder within_____ calendar days from the date of notice that removal of the property is authorized. The successful bidder will prosecute the work, or any separate portion thereof, with such diligence as will insure its completion within the time specified. Work may be performed between the hours of_____to_____ daily, _____excluded. When more than one item is sold hereunder, the time specified herein for completion of removal and restoration will run concurrently as to each item and not consecutively. No extensions of the time herein specified for completion of removal and restoration work will be granted unless, in the opinion of the said District Engineers unusual and unforeseeable circumstances justify such extensions, and agreement is reached on an adequate consideration for the extension.

(Note: Adequate additional consideration will be obtained for extensions unless the District Engineer determines a charge is inequitable as due to catastrophic circumstances or in some degree to Government action; or a charge would not be feasible because of likelihood of a default or other result not in the best interests of the Government. Where time is of the essence, in order to conform to construction schedules, or for other reasons, a statement to such effect should be made in this paragraph, and a statement that no extensions will be allowed should be substituted for the last sentence of condition 7 above.)

8. (Note: To be used at the discretion of the District Engineer.) In addition to the payments required under paragraph 5 above, each successful bidder will, within_____ calendar days after notice of acceptance of his bid by the Governments deliver to the said District Engineer a certified check, cashier's check or postal money order, payable to the order of the "Treasurer of the United States," in an amount equal to the total of the performance deposits specified below for all items on which he is the successful bidder, in order to insure faithful performance under this contract. The amount of the performance deposit required for each item is as follows: *

Figure 11-22c

Item No.	Performance Deposit

(Note: Insert for each item the amount of performance deposit required. The amount specified for each item should be sufficient to protect the interest of the Government in the event of failure of the purchaser to perform all the work required under the contract incident to removal of the listed item within the time limit prescribed. The performance deposit listing may, if more convenient, be shown on the attached bid form, with appropriate reference in this paragraph to the listing there.)

In lieu of the deposit of a certified check, cashier's check, or postal money orders the purchaser may furnish a performance bond with surety approved by, and in a form acceptable, to the said District Engineer, the penal sum of such bond to be the same as the total of performance deposits provided for above. Standard Form 25, available at all surety and guaranteeing offices, may be used for this purpose.

9. In the event of any default by any bidder hereunder, all claim to and any title held in the property for sale, or any portion of it remaining, will be forfeited and all payments made by the defaulting bidder (including bid or performance deposits or bonds) will be applied by the Government to any loss, cost and expense occasioned to the Government by the default (including any loss, cost and expense in selling or otherwise disposing of such property in such manner, whether economic or not, as time limitations may allow). The defaulting bidder is liable for the full amount of damages sustained by the Government because of his default; such liability is not limited to the amount of the aforesaid payments. If the obligations of the successful bidder under this contract are discharged to the complete satisfaction of the said District Engineer, any performance deposit required hereunder will be promptly returned without interest. In the absence of default, the deposits of unsuccessful bidders will be returned without interest as promptly as possible after rejection of the bids.

10. The successful bidder will assume responsibility and liability for all injuries to persons or damages to property directly or indirectly due to, or arising out of, the operations of the successful bidder under this contract and the successful bidder agrees to indemnify and save harmless the United States against any and all claims of whatsoever kind and nature due to, or arising out of, this contract.

(Note: The District Engineer may, at his discretion, add here a requirement that the successful bidder carry liability insurance.)

11. (Note: To be used at the discretion of the District Engineer.) The successful bidder will not resell the property, or any portion *

Figure 11-22d

* thereof, or advertise the property, or any portion thereof, for resale until the property, or any portion thereof proposed for resale, has been removed from the site in accordance with this contract.

12. Sealed bids must be executed and submitted, in quadruplicate, on the bid form accompanying this invitation for bids, bid and acceptance, or on exact copies thereof. Additional copies of the bid form may be obtained from the said District Engineer.

13. A bid executed by an attorney or agent on behalf of the bidder must be accompanied by four authenticated copies of his Power of Attorney or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the Certificate Of Corporate Bidder must be executed. If the bid is signed by the secretary of the corporation, the Certificate must be executed by some other officer of the corporation under the corporate seal. In lieu of the Certificate of Corporate Bidder, there may be attached to the bid copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

14. The invitation number and bid-opening time must be plainly marked on the left side of the sealed envelope in which bids are submitted, for example:

Return Address

Sealed Bid
To be opened:

Time_____

Date_____

INVITATION NO. _____

TO: District Engineer,_____
ATTN: REAL ESTATE DIVISION

_____

_____

_____

15. It will be the duty of each bidder to see that his bid is delivered by the time and at the place prescribed in the invitation. Bids received prior to the time of opening will be securely kept, unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no bid or modifications of a bid, or withdrawals of a bid received thereafter, will be considered, except that those received before award is made, but delayed in the mails by occurrences beyond control of the bidder, may be considered if written certification is furnished by authorized postal authories to that effect. *
No responsibility will attach for the premature opening of a bid not

Figure 11-22e

* properly addressed and identified. All modifications of a bid or withdrawals of a bid must be in writing. Telegraphic bids will not be considered, but modifications or withdrawals, by telegraph, Of bids already submitted will be considered, if received prior to the time set for opening bids.

16. At the time fixed for the opening of bids, their contents will be made public by announcement for the information of bidders and others properly interested, who may be present, either in person or by representative; provided, however, that any information submitted in support thereof, the disclosure of which might tend to subject the person submitting it to a competitive business disadvantage, will upon request be held in strict confidence by the United States.

17. The right is reserved, as the interest of the Government may require, to withdraw any and all items from the sale; to reject any or all bids; and to waive any defect or informality in bids received.

18. Notice of acceptance or rejection of bids, notice of authority to proceed with removal of the purchased property, and any other notices hereunder shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder, or his duly authorized representative, at the address indicated in the bid.

19. Any property of the United States damaged or destroyed by a bidder will be promptly repaired or replaced by the bidder to the satisfaction of the said District Engineer or, in lieu of such repair or replacement, the bidder will, if so required by the said District Engineer, pay to the United States an amount determined by the said District Engineer to be sufficient to compensate for the loss sustained by the United States.

20. Except as otherwise provided in this invitation for bids, any dispute concerning a question of fact arising under this invitation for bids, which is not disposed of by agreement, shall be decided by the District Engineer, who shall reduce his decision to writing, and mail, or otherwise furnish, a copy thereof to the bidder. The decision of the District Engineer shall be final and conclusive, unless, within 30 days from the date of receipt of such copy, the bidder mails, or otherwise furnishes, to the District Engineer a written appeal addressed to the Secretary of the Army. The decision of the Secretary, or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the bidder shall be afforded an opportunity to be heard *

Figure 11-22f

* and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the performance of the contract and in accordance with the District Engineer's decision. This condition does not preclude consideration of questions of law in connection with those decisions; provided, that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

21. This invitation for bids, including all the instructions, terms, and conditions set forth herein, and the bid, when accepted by the Government, shall constitute the contract of sale between the successful bidder and the Government. Such agreement shall constitute the whole contract, unless modified in writing and signed by both parties. No oral statements or representations made by, for, or ostensibly on behalf of, either party shall be a part of such contract. Neither this contract, nor any interest therein, shall be transferred or assigned by the successful bidder.

22. No Member of or Delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

23. The successful bidder warrants that he has not employed any person or agency to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract without liability, or, at its option, to recover from the successful bidder the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the successful bidder upon a contract secured or made through bona fide established commercial agencies maintained by the successful bidder for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally.

<u>SPECIAL INSTRUCTION TO BIDDERS.</u> ATTENTION IS INVITED TO THE FACT THAT THE INTERSTATE COMMERCE ACT MAKES IT UNLAWFUL FOR ANYONE OTHER THAN THOSE DULY LICENSED UNDER THE ACT TO TRANSPORT THIS PROPERTY IN INTERSTATE COMMERCE FOR HIRE. ANYONE AIDING OR ABETTING IN SUCH VIOLATION IS A PRINCIPAL IN COMMITTING THE OFFENSE (49 U.S.C. 301-327 and 18 U.S.C. 2). *

Figure 11-22g

*

Invitation No._____

_____
Place

B I D

_____
Date

TO: (Name and Address of Issuing Office)

The undersigned_____
a corporation existing under the laws of the State of_____
a partnership consisting of_____
an individual trading as_____
of_____
(Address and Telephone Number)
hereby offers to purchase from the United States of America, subject to the terms and conditions and in accordance with the instructions to bidders contained in Invitation for Bids No._____, attached hereto and made a part hereof, any or all of the items described below for which bid prices are indicated, in consideration of the price indicated for each such item.

Item No.	Description and Location	Price Bid (to be furnished by bidder)

(Note: All property not to be included in the sale should, whenever possible, be separated from the property to be sold and, before the sale, removed from the site. If this is not possible, specify in the listing of items what is not included in the sale and expressly reserve, in the body of the invitation, a right in the Government to remove such property.)

Inclosed is a certified check, cashier's check, or postal money order, Payable to the order of the Treasurer of the United States, in the amount of_____
_____($_____).

_____

By_____

_____ *
Business Address

Figure 11-22h

* CERTIFICATE OF CORPORATE BIDDER

I,_____, certify that I am the_____ Secretary of the corporation named as bidder herein; that_____, who signed this bid on behalf of the bidder, was then_____ of said corporation; that said bid was duly signed for and in behalf of said corporation by authority of the governing body and is within the scope of its corporate powers.

AFFIX
SEAL

_____

A C C E P T A N C E B Y T H E G O V E R N M E N T

Accepted by and on behalf of the United States this_____ day of_____ , 19____, as to Items numbered_____
_____

(Name)_____

(Title)_____ *

Figure 11-22i

*

SUPPLEMENT TO STANDARD FORM 114
FOR USE IN TIMBER SALES CONTRACT

1. At the discretion of the Division or District Engineer, provisions similar to provisions 8 and 9, ENG Form 1038-R, Appendix II, may be included. (See FPMR, Section 101-45 .3O2-9, 302-10, and 302-11.)

2. Timber will be cut and removed in strict accordance with the terms and conditions of sale and instructions issued by the contracting officer. All timber shall be cut and removed on or before and none later than _____.Stumps shall be cut to cause the least possible waste and not higher than_____ inches on the side adjacent to the highest ground; all trees shall be utilized to as low a diameter in the tops as practicable so as to cause the least waste and to a minimum diameter of_____ inches.

3. Timber shall be scaled by Scribner Decimal C log rule or counted or measured as prescribed by the contracting officer. If measurement is to be made after falling timber shall be piled or skidded for measurement as directed by the contracting officer or his duly authorized representative.

4. Slash and other refuse shall be disposed of as directed by the contracting officer.

5. All telephone lines, ditches, and fences, locate within or immediately outside the exterior boundaries of the sale area, shall be protected so far as possible in logging operations and, if injured, shall be repaired immediately by the purchaser. The contracting officer may, when in his judgment it is necessary, require the purchaser to move any such telephone line or fence from one location to another. Roads and trails shall at all times be kept free of logs, brush, and debris resulting from the purchaser's operations hereunder. Any road or trail used by the purchaser in connection with this sale that is damaged or injured beyond ordinary wear and tear, through such use, shall promptly be repaired by him to its original condition.

SPECIAL INSTRUCTION TO BIDDERS. ATTENTION IS INVITED TO THE FACT THAT THE INTERSTATE COMMERCE ACT MAKES IT UNLAWFUL FOR ANYONE OTHER THAN THOSE DULY LICENSED UNDER THE ACT TO TRANSPORT THIS PROPERTY IN INTERSTATE COMMERCE FOR HIRE. ANYONE AIDING OR ABETTING IN SUCH VIOLATION IS A PRINCIPAL IN COMMITTING THE OFFENSE (49 U.S.C. 301-327 and 18 U.S.C. 2). *

ENG FORM 2140-R
1 Feb 66

Figure 11-23

CONTRACT OF SALE

EP 405-1-2

THIS CONTRACT OF SALE made and entered into this _____ day of _____, 19__, by and between the District Engineer, U. S. Army Engineer District, _____, _____, for and on behalf of the United States of America, hereinafter called the "Government", and _____, whose address is _____, hereinafter called the "Purchaser", WITNESSETH:

THAT under authority of Public Law 999, 84th Congress, approved 6 August 1956 (70 Stat.1065), as implemented by the Delegations, Rules and Regulations issued by the Secretary of the Army (33 CFR 211.71-81; 28 FR 69, pp. 3450, 3451; 28 FR 86, p. 4375) the Government has made available for sale for cottage site development the following land in the _____ Reservoir area, __ County, State of _____:

(DESCRIPTION)

NOW, THEREFORE, in consideration of the performance by each of the parties hereto, of the terms and conditions hereinafter set forth, it is mutually agreed as follows:

1. The Government agrees to sell and the Purchaser agrees to purchase the above-described land, for (individual) (omit this word if inapplicable) cottage development and use only, for the sum of _____ Dollars ($_____). In addition thereto, the Purchaser shall pay the costs of survey and boundary markers necessary as an incident to the conveyance of the land to be conveyed. A deposit in an amount equal to twenty (20) per centum of the purchase price shall be paid by the Purchaser at the time of execution of this contract, receipt of which is hereby acknowledged. Such payment shall be made payable to the Treasurer of the United States. In the event of default by the Purchaser this deposit shall be retained by the Government as liquidated damages. Payment in full for the balance of the purchase price and for costs of the survey and boundary markers shall be made simultaneously with delivery of the executed deed by the Government to the Purchaser.

2. The property hereinbefore described is sold "as is" and without recourse against the Government. The Government makes no representation or warranty, express or implied, as to condition, fitness for any use or purpose, or accuracy of the description. Accordingly, downward adjustment in the purchase price or demand for rescission based upon the failure of the property to correspond with the above description or inability by the Purchaser to use said property for cottage site purposes will not be

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(PROPONENT: DAEN-REP)

considered. In the event a survey reveals that the property to be conveyed contains a substantially greater acreage than contemplated, the Purchaser shall also pay to the Government the appraised fair value of such additional land, simultaneously with delivery of the deed.

3. The conveyance shall be by quitclaim deed, executed by the District Engineer, U. S. Army Engineer District, _____, at _____.

4. a. The property shall be used for cottage site purposes only. The term "cottage site" as used herein is defined in the Code of F[illegible]al Regulations, Title 33, Section 211.72. (The property to be con[illegible] an Individual Cottage Site, i.e. a parcel of land developed [illegible] developed by the construction of a private cottage thereon [illegible] or to be used, for private recreational purposes. The pro[illegible] not be subdivided but shall remain intact as a single uni[illegible] more than one (1) cottage may be constructed on such site. I[illegible] this restriction is breached, title to the land and al[illegible]ents placed thereon shall revert to and vest in the Govern[illegible] the Government is required to institute legal proceedings t[illegible] its right to reversion, the grantee (Purchaser) shall h[illegible] for the costs of such action.) (Strike the last four se[illegible] inapplicable.)

b. The conveyance shall b[illegible] to existing easements for public roads, highways and stree[illegible]blic utilities and pipe lines.

c. The Government [illegible]ves a perpetual easement to flood those lands lying below e[illegible] _____ feet, mean sea level (strike this clause, if inappli[illegible]

d. The c[illegible]ed shall be placed on record in the manner prescribed by th[illegible] of the State of _____ and at the sole cost and [illegible] the Purchaser, including payment of any required documentary [illegible]amp tax.

5 [illegible]rnment is not obligated and shall not be liable for cons[illegible] maintenance or service of access roads or other improvements to [illegible]pment of the lands included in this contract of sale.

6 Title to the property sold hereunder shall vest in the Purchaser at the time of delivery of the executed quitclaim deed.

7. If the Purchaser is presently in possession as a lessee of the premises to be conveyed, then it is mutually agreed that effective upon the date of delivery of the executed quitclaim deed, such lease is terminated and any unearned prepaid rental will be refunded to the Purchaser.

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8. In any case where liability of the Government to the Purchaser, under this Contract of Sale, has been established, the Government's maximum liability shall be limited to the refund of any monies paid by the Purchaser to the Government under this Contract of Sale.

9. The Purchaser warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide es blished commercial or selling agencies maintained by the Purchaser e purpose of securing business. For breach or violation of this wa the Government shall have the right to annul this contract liability or in its discretion to require the Purchaser to pay cion to the consideration herein set forth, the full amount of mission, percentage, brokerage, or contingent fee.

10. No Member of or Delegate to Congre ident Commissioner shall be admitted to any share or part of ract or to any benefit that may arise therefrom; but this provi l not be construed to extend to this contract if made with cion for its general benefit.

11. a. That, except as oth ovided in this contract, any dispute concerning a question of fact a der this contract which is not disposed of by agreement shal ded by the said officer, who shall reduce his decision to writ mail or otherwise furnish a copy thereof to the Purchaser. The de the said officer shall be final and conclusive unless, wit ys from the date of receipt of such copy, the Purchaser mails ise furnishes to the said officer a written appeal addressed t retary of the Army. The decision of the Secretary or his duly auth epresentative for the determination of such appeals shall be fina clusive unless determined by a court of competent jurisdictio been fraudulent, or capricious, or arbitrary, or so grossly e as necessarily to imply bad faith, or not supported by substan ence. In connection with any appeal proceeding under this condi Purchaser shall be afforded an opportunity to be heard and to dence in support of its appeal. Pending final decision of a reunder, the Purchaser shall proceed diligently with the performance contract and in accordance with the said officer's decision.

b. This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph a above: Provided that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

12. a. The Government may, by written notice to the Purchaser, terminate this contract if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities

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(in the form of entertainment, gifts, or otherwise) were offered or given by the Purchaser, or any agent or representative of the Purchaser, to any officer or employee of the Government with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of this contract provided, that the existence of the facts upon which the Secretary of my or his duly authorized representative makes such findings shall ue and may be reviewed in any competent court.

b. In the event this contract is termi rovided in paragraph a hereof, the Government shall be er to pursue the same remedies against the Purchaser as it c e in the event of a breach of the contract by the Purchaser a penalty in addition to any other damages to which it may h by law, to exemplary damages in an amount (as determined retary of the Army or his duly authorized representative) w be not less than three nor more than ten times the costs y the Purchaser in providing any such gratuities to any such f employee.

c. The right dies of the Government provided in this clause shall not be and are in addition to any other rights and remedies provided under this contract.

13. No s contract nor any interest therein shall be assigned or transf he Purchaser to any other party.

ITNESS WHEREOF, the parties hereto have executed this contract o and year first above written.

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WITNESSES

_____ (L.S.)
Purchaser

_____

THE UNITED STATES OF AMERICA

_____

_____ By_____

_____

District Engineer
U. S. Army Engineer District _____
Contracting Officer

ENG FORM 3297-R